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Editor's Page

For the first time since the fall of the Soviet Union, we are engaged in a serious debate about the shape and character of global politics. What produced the debate was, first of all, the growing arrogance and recklessness of the remaining superpower and, second, the odd combination of irresponsibility and opposition in the rest of the world—most of all in Europe. The significance of the rift between Europe and the United States is hard to gauge right now, but it already provides an opportunity to think about and work toward a more balanced world order and a more equal, even if only a little more equal, division of power and responsibility. We feature a group of articles dealing with these questions by two Americans, a German, and a British American. In subsequent issues, we will try, in the name of internationalism, to extend the argument. ■ For reasons that are hard to figure out, we are not engaged right now in a serious debate about the shape and character of domestic politics. None of the Democrats running for president has managed to describe a clear alternative to the agenda of the Bush administration, even though this is the most right-wing government in American history. Because arrogance and recklessness are features of its domestic as well as its foreign policy, we need (whatever its global value) a rift at home. As in the world, so in the United States, countervailing powers would make for a better society. I remember when writers in *Dissent* criticized John Kenneth Galbraith's call for countervalence: they wanted a victory for the workers and the poor, not a balancing act. But right now, a balance would be a victory. ■ Some of the important domestic issues are addressed in this issue: the failure of welfare reform, the inadequate attention to public health, the radical inequities in the way we compensate victims of natural and human disasters, the threat to abortion rights (and the sharp disagreements about how to deal with it). We have articles coming on the extent of unemployment and the erosion of civil liberties. If there is a common theme here, it is vulnerability: more and more Americans find themselves living under threat, with a government that despite its putative commitment to "homeland security" is doing less and less to make its citizens secure. ■ There has been an interesting argument on the left—some of it in our pages—about the connection (or disconnection) between multiculturalism and welfarist or social democratic politics. It's mostly been a theoretical argument, but now Keith Banting and Will Kymlicka have looked for the actual correlations. It isn't often that we get a chance to demonstrate our commitment not only to socialism but also to empiricism.

M.W.

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Fall 2003

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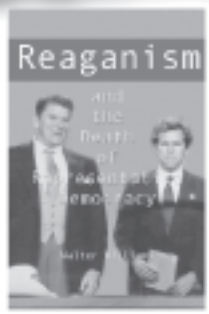

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Privacy without the Closet

Lawrence v. Texas

Jean L. Cohen

The Supreme Court's decision in *Lawrence v. Texas* (June 27, 2003) has been heralded as a landmark, and indeed it is. In its 6-3 vote, the Court overturned a Texas law that criminalized "homosexual" sodomy, thereby striking down not only all same-sex sodomy laws (on the books in Kansas, Oklahoma, and Missouri), but also all "gender neutral" laws criminalizing sodomy between heterosexuals and homosexuals alike (in Alabama, Florida, Idaho, Louisiana, Mississippi, North Carolina, South Carolina, Utah, and Virginia). Moreover, *Lawrence* overruled the Court's own seventeen-year old precedent, which dismissed the same constitutional argument that the Court now embraces, and it cited a decision by the European Court of Human Rights to make its new case. The *Lawrence* decision struck down the Texas law on the grounds that it violates privacy and liberty interests protected by the due process clause of the Fourteenth Amendment. In other words, the Court found that fundamental privacy protections apply to homosexual as well as heterosexual intimacy. No longer can consensual adult sexual behavior conducted in private between persons of the same sex be criminalized merely because a legislative majority considers the acts or the actors repugnant. No longer can homosexuals or lesbians be stigmatized as sexual deviants by the law.

That this decision matters a great deal to those affected is no surprise. But why did it receive several days' worth of full-spread front-page headlines, in-depth articles, and analysis? Why did it trigger innumerable radio and television talk-show debates? Why did it lead to such euphoria on the part of gays, lesbians, and civil libertarians, and such rage on the part of conservatives? I will try to answer these questions by providing a bit of background and by analyzing the doctrinal, cultural, political, and constitutional issues it raises.

Background

In its infamous 1986 decision in *Bowers v. Hardwick*, the Court refused to apply to "homosexual intimacy" the privacy jurisprudence it had developed in a line of rulings regarding intimate association. From *Griswold v. Connecticut* (1965), which first applied "substantive due process privacy analysis" to the right of married couples to use contraception; through *Eisenstadt v. Baird* (1972), which granted the same right to non-married couples on equal protection grounds; through *Roe v. Wade* (1973), which protected the right to choose an abortion as an intimate decision covered by privacy analysis; and more recently, *Planned Parenthood of Southeastern Pa. v. Casey* (1992), which upheld the core of *Roe*, the Court had affirmed the substantive dimension of the liberty and privacy at stake in personal decisions relating to marriage, procreation, contraception, family relationships, and decisions arising in the context of intimate association. In *Bowers*, however, the Court refused to extend these protections to homosexual intimate association, arguing that the Constitution does not confer a right to engage in "homosexual sodomy" and invoking the history of Western civilization and the Judeo-Christian tradition in order to show that homosexual sodomy has long been deemed immoral and is, indeed, a "crime against nature."

The *Lawrence* decision overturned *Bowers* on both counts. Justice Anthony Kennedy's majority decision finally acknowledged that the issue at stake never was the "act of sodomy" per se, but rather the right to choose an adult intimate relationship along with the intimacies it entails. According to Kennedy, "To say that

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the issue in *Bowers* was simply the right to engage in certain sexual conduct demeans the claim that individual put forward just as it would demean a married couple were it to be said that marriage is simply about the right to have sexual intercourse." Moreover, the result of criminalizing homosexual sodomy is to stigmatize people who engage in same-sex relationships and invite discrimination against them in both the public and private spheres. Quoting Justice John Paul Stevens's dissent in *Bowers*, Kennedy reminds us that the mere fact that a governing majority in a state traditionally viewed a practice as immoral is insufficient reason for upholding a law prohibiting the practice. Neither history nor tradition could save a law against miscegenation from constitutional attack. (The reference is to *Loving v. Virginia*, [1967], which struck down laws against marriage between blacks and whites.) In other words, argument, not "tradition," is needed to justify such prohibitions.

Doctrine

What makes this decision radical, however, is the fact that it is grounded in privacy analysis rather than equal protection arguments. Equal protection would have been the easier and less controversial route to take, as Justice Sandra Day O'Connor suggested in her concurrent opinion. Because the Texas statute at issue criminalized only homosexual sodomy, treating the same conduct engaged in by heterosexuals differently, it was obviously intended to register moral disapproval of a group. O'Connor insists, rightly, that mere disapproval without any asserted state interest is not a sufficient rationale under the Equal Protection Clause of the Fourteenth Amendment to justify discrimination. Indeed, she maintains that *Lawrence* raised different issues than *Bowers*, which she still defends, insofar as the Georgia law at issue in 1986 was gender neutral and hence raised no equal protection arguments, while the Texas law is not.

But this will not do. For it was the Court itself that turned the Georgia case into a question of "whether the federal Constitution confers a fundamental right upon *homosexuals* to engage in sodomy." (Emphasis added.) Thus the Court, by interpretive fiat, transformed a neutral sodomy law into a law against homosexuals. In so doing, it unwittingly revealed a deep truth; namely, that the sole purpose of sodomy laws today is to stigmatize, criminalize, and terrorize one group only: homosexuals. The issue in *Bowers* had to be confronted directly: the equal protection route was barred by the Court's earlier decision that turned sodomy into a marker for homosexuality.

Even if equal protection were invoked to strike down same-sex sodomy laws, gender neutral sodomy laws could still stand and do their discriminatory work. Unless the substantive validity of the laws' infringement of privacy and liberty interests is addressed, the stigma would remain even if a particular law were unenforceable due to equal protection reasons. Constitutional privacy protection, on the other hand, makes it impossible to criminalize "homosexual conduct"—sodomy—per se, and hence pulls the rug out from under discriminatory state policies based on such stigmatization. It should come as no surprise, then, that pursuant to *Lawrence*, a legal challenge has just been made to the Clinton administration's infamous "Don't ask, don't tell" policy that allows homosexuals into the military *if* they don't engage in criminalized homosexual acts and *if* they are quiet about their orientation. I do not see how this policy can survive the new ruling, because its condition of possibility was the *Bowers* decision, now overturned.

Politics

What about the politics of *Lawrence v. Texas*? Why did the Court make such a sweeping decision, and what follows from it? One can only speculate about the first question: we know that several justices are close to retirement and that a presidential election is coming up. Did the 6-3 majority deliberately reaffirm and extend privacy analysis and overturn *Bowers* in this sweeping way in order to make it hard for the Court to undo the line of privacy jurisprudence that secures *Roe* and now homosexual rights? It would surely undermine the Court's legitimacy if it overruled itself again on the same issue in the near future.

Or was this a triumph of the libertarian over the moral majority brand of conservatism within the Court (Kennedy and O'Connor over

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Antonin Scalia and Clarence Thomas) and a nod to the libertarian cause within the Republican Party? After all, the Court does not exist in a political or social vacuum. The Bush administration has not made much noise against this decision, knowing full well that the moral majority, unlike the libertarians, has nowhere else to go in the voting booth.

As for the second question, theorists can do better. Let's look at Scalia's scathing dissent, with its warning that state laws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity are now all at risk because *Bowers* has been overturned and a right to privacy covering adult intimacy has been "discovered" in the Constitution. The sweeping reach of *Lawrence* extends privacy protection well beyond the limits Scalia and others tried to establish in 1986, which were drawn around *the* paragon intimate association, the family. To Scalia, "This effectively decrees the end of all morals legislation."

Is he right? What the *Lawrence* decision does by reaffirming and extending privacy analysis is to shift the burden of proof onto the regulators. It overturns only one type of "morals legislation": the standard version based on the premise that only procreative sex within heterosexual marriage is legitimate, and which invoked "tradition" or religion to justify laws banning everything else. This premise is no longer considered self-evidently true; indeed, it cannot withstand criticism in a secular society, where laws must be justified without referring to a particular religious worldview. If no other justifications can be found, if no other state interest exists in regulating or criminalizing intimate relationships, then they must be left alone. But morals legislation grounded on good reasons remains perfectly permissible.

Let's look at the list. I can imagine coming up with good reasons for outlawing bestiality, bigamy, and adult incest, and for regulating prostitution and obscenity. But I cannot come up with any convincing arguments for regulating fornication, masturbation, or adultery. I am also at a loss as to why one would want to prohibit or deny recognition to homosexual marriage. It's up to those who would pass laws about these practices and relationships to provide good reasons for doing so: tradition and some vague reference to "morality" are not good enough.

Constitutional Issues

Finally, I must mention two major constitutional issues raised by this case. Isn't privacy analysis based on substantive due process an example of illegitimate, activist judicial review? And why should European law or that of any other polity be relevant to the Court's interpretation of *our* Constitution? Here I must be very brief.

It is indeed hard to defend substantive as distinct from procedural due process, for the Fourteenth Amendment provides that states *may* deprive citizens of their liberty so long as they adhere to "due process." Scalia is right to note in his dissent that this clause refers primarily to legal procedure. When the Court starts reading substantive values such as privacy or liberty of contract into the due process clause, it substitutes itself for the legislator, making higher law instead of interpreting it. However, Scalia also acknowledges that the judges have for a very long time now "interpreted" the due process clause as protecting *fundamental* liberty interests unless there is a compelling state interest at stake. Everything turns on what is deemed a fundamental interest. Scalia wants this restricted to rights deeply rooted in our tradition and history. But as Stevens correctly argues, tradition is not enough of a criterion, especially when we come to see past "values" as based on prejudice or narrow-mindedness. The critique of substantive due process may be cogent, but insofar as the Court engages with substantive issues, it must be possible for the judges to argue about them, learn from experience, and change their minds.

What about the legitimacy of citing the decisions of constitutional courts in other polities? Kennedy cited a 1981 gay rights opinion of the European Court of Human Rights, among other historical and contemporary references, to show that the decision in *Bowers* was out of step with developments in other Western countries. Scalia found this to be a dangerous imposition of foreign views on

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American constitutional law. But the point was of course to show that moral learning about the integrity and dignity of all human beings, including homosexuals, must triumph over entrenched prejudice and that a Western consensus was emerging regarding basic human rights. The Court's case does not turn on this reference, but it does serve to link U.S. constitutional interpretation to key developments in supranational human rights law. Interest in "foreign" legal developments in our globalizing world does not strike me as illegitimate; the danger lies more in justices' keeping their blinders on. The Constitution must be a living thing, adaptable to the present. Universalistic principles should not be deemed "foreign," even if someone else has insight into their import and reach before our own Court does.

Indeed, the two constitutional issues are connected. Because our Constitution is extremely difficult to amend, the more democratic route of registering value change or moral learning via the political process on the constitutional level is all but closed. Thus the Court resorts to substantive due process to bring the Constitution up to date with contemporary knowledge and to strike down laws based on prejudice or introduced for discriminatory purposes. The Court cites legal developments elsewhere for the same reason. Otherwise we would be prisoners of an eighteenth-century worldview, and our constitutional interpretation would be immune to learning. Certainly it would be preferable from the democratic perspective to have a less rigid constitution. As things now stand, however, changing our amendment rule seems almost inconceivable for the same reasons that the Constitution is hard to amend in the first place: it would require a constitutional amendment.

Thus, Scalia's polemics notwithstanding, the *Lawrence* decision did not illegitimately take a side in the "culture wars." Rather, it faced up to the fact that the old premises and justifications for morals legislation in this country are no longer sustainable. It may be that the decision, like all law, unavoidably favors some groups against others. But this does not amount to unjustifiable partiality in the way Scalia implies. The Court did make a choice on the level of justification: it chose to argue in terms of post-conventional morality rather than impose a traditionalist religious worldview. In other words, it came down on the side of justice against injustice. There is nothing illegitimate about that sort of partiality. ●

Jean L. Cohen is a professor of political science at Columbia University and author, most recently, of *Regulating Intimacy: A New Legal Paradigm*.

Gay Marriage and the Domestication of Sex

Murray Hausknecht

Canada's decision to permit same sex-marriage and the recent Supreme Court decision striking down anti-sodomy laws have once again filled the air with familiar conservative arguments featuring "traditional morality" and "family values." It is a rhetoric that allows talk of marriage without explicitly mentioning sex. "Traditional morality" means, in the words of California's "Defense of Marriage Act," Proposition 22 (which was overwhelmingly approved in 1999), "marriage between a man and a woman." "Family values" ties marriage to procreation or, as the director of the Institute for American Values maintains, a "biological bond between parents and children." What the rhetoric obscures is another end of marriage: the regulation of sex.

To be sure, marriage is related to the nurturing and socialization of children, but historically that has never been its only purpose. For example, marriage has been used to cement al-

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liances between families with common interests—particularly economic ones—and to create alliances between nations. But whatever the purpose, its attainment depends on the successful control of the sex drive.

Sex is a constant threat to the routines that constitute everyday life and that allow people to live, work, and play together, whether in corporations, the military, universities, or country clubs. Terms such as "harassment," "escapade," "fling" underline its disorderly possibilities. Sex, however, can be channeled or disciplined; its potential for creating chaos in relationships and institutions can be, if not eliminated, at least moderated.

One promise a marriage ritual exacts of a couple is the vow of "faithfulness" or exclusivity: no sex outside the marriage. In exchange, as it were, each assumes the responsibility of providing the other with the satisfactions of sex. These vows are typically part of a religious ceremony, and when civil law prohibits adultery or "fornication," secular and divine power together generate pressures supporting the marital promises. Honoring the dictates of law, religion, and public expectation domesticates sex. Still, even in the most "god-fearing" and "law-abiding" of times, to say nothing of "dissolute" or "decadent" eras, marriage vows have a chancy career. Marriage, then, to understate the case somewhat, is not wholly effective in regulating sex.

We are tempted, though, to overestimate its lack of success; the moralist's jeremiad and the gossip's snicker focus attention on the failure of marriage rather than on more prosaic realities. In 1992 the most sophisticated and statistically rigorous national survey of American sexual behavior asked more than three thousand respondents between the ages of eighteen and fifty-nine how many "sex partners" they had in the past year. Close to 94 percent of the married respondents reported only one sex partner and just over 78 per cent had only one partner in the previous five years.* Even granting the notorious difficulties of sex surveys, the findings indicate that marriage, although not totally effective, does successfully regulate sex. On reflection, this is not surprising. Consider only, for example, the practical implications of marital inertia, perhaps more easily understood as one of marriage's "economic" benefits: all other things being equal, marriage increases the probabilities of attaining the satisfactions of sex without incurring the "costs" of continually searching for partners in the "open market."

If marriage does discipline sex, then those denied its benefits can more easily drift into a life of disorderly or promiscuous sex. This is precisely the situation of gay men. The same survey found that "homosexual active men" engaging in "same-gender sex" have "higher mean numbers of partners" and lower rates of "long-term relationships" than heterosexual men, although the amount of promiscuity is not as great as stereotypes imagine. (Lesbians are significantly less promiscuous and have more long-term relationships.) "Lack of formal recognition of same-gender relationships [marriage] and lack of social pressure and support," the research suggests, account for the fewer long-term relationships "and the higher rate at which new partners are acquired."

In gay communities, promiscuity can be part of the subculture. That is, promiscuous sex, although not totally approved, is accepted by many as an inevitable and perhaps a defining element of the culture. In those communities, unlike the larger society, the expectation that people will and should get married cannot act as a deterrent to promiscuity as it does in the surrounding society.

This reveals a logical contradiction between "family values" and "traditional morality." The latter's opposition to same-sex marriage encourages a promiscuity that monogamous, lifetime relationships, a basic premise of "family values," are expected to prevent. Logic aside, though, one would expect that conservatives, who value social order for its own sake, would support same-sex marriage, albeit reluctantly, if only as a means of controlling disorderly sexual behavior.

A CONSERVATIVE CASE for gay marriage is not as impossible as it may sound. It starts from the proposition that sexual promiscuity is a social evil because it threatens the stability of the social order. Promiscuity is also a moral evil because promiscuity is sex without love and without a desire for a family. For conservatives, the nub of the problem is promiscuity, both

*Edward O. Laumann, John H. Gagnon, Robert T. Michael, and Stuart Michaels, *The Social Organization of Sexuality* (University of Chicago Press, 1994).

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homosexual and heterosexual; society cannot afford to turn a blind eye to sex without love and a lifelong monogamous commitment.

This argument is open to the objection that it brings conservatism itself into question. Just as there is a vulgar Marxism, there is a vulgar conservatism or, at least, a vulgar conception of conservatism. It assumes that conservatives oppose all change, and that when change occurs it occurs only, so to speak, over their dead bodies. True, conservatives are always uneasy in the face of change and often fight it fiercely. But when their resistance is unsuccessful, conservatives and conservatism ought to be able to adapt to the new situation. The adaptive capacity of conservatism allows it to make its contribution to a democratic politics. It is unlikely, however, that conservatives will support same-sex marriage in the foreseeable future; logic, social realities, even "family values," are not going to determine the responses of conservatives on this issue.

Basic to much conservative thinking is a fundamental conviction that institutions and much of personal behavior are founded on a natural order; an order largely beyond human control that constitutes the taken-for-granted physical and social worlds in which we live. In a letter to the *New York Times* immediately after the Supreme Court decision declaring the Texas anti-sodomy law unconstitutional, a Chicago man stated that conviction with an unadorned simplicity and directness: "Laws against sodomy, adultery, and other deviant sexual practices . . . are . . . just, for they are in conformity with the natural law . . . the Texas law should have been amended to include heterosexual deviancy as well as homosexual activity." His unhappiness is understandable, because certainties about how the world works, one's place in the world, and, indeed, one's identity are commonly founded on conceptions of the natural order. A challenge to any one of these certainties has a domino effect. In his dissent in the Texas sodomy case, Justice Antonin Scalia specified in greater detail the "just" laws the Chicagoan defends: "State laws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity . . . [are] called into question by today's decision . . . " Any questioning of laws founded on the natural order creates a disorienting, anxiety-provoking world of ambiguous shape and structure. Because sex is always highly vulnerable to fears and anxieties, the disorientation is even more intense when laws regulating sex, such as those cited by Scalia, seem to be threatened.

Throughout most of the nation's history, homosexuality has existed outside cultural consciousness; when it did surface it could be brushed off as "deviance," "illness," or "evil" to be dealt with by the law, medicine, or religion. After the Stonewall rebellion in 1969, when gays resisted police trying to raid an after-hours bar, homosexuality was out of the cultural closet. The felt need for something like Proposition 22 indicates that the usual defenses of the "natural order" had to be bolstered by the authority of the state.

Canada, though, contradicts the implicit premise of Proposition 22 and, as an important and powerful authority, its openness to same-sex marriage raises the stakes immeasurably. At the most fundamental level, the Canadian decision to permit same-sex marriage—a policy supported by Canada's supreme court, legislature, and prime minister, and which has evoked practically no public opposition—forcibly challenges the certainties that structure understandings of the world and define a person's place and identity. We may expect fierce battles, because certainties that touch the core of people's lives are never easily surrendered.

Still, the history of the past fifty years gives us grounds for optimism. The present situation is very much like the one that culminated in *Roe v. Wade* and the ultimate success of the civil rights movement: what was once considered "unnatural"—abortion, black and white kids sitting together in the same classroom, interracial marriage—are now accepted as unremarkable features of everyday life. Despite the ever present possibility of guerrilla counterattacks, these are campaigns that have been won. They are also auguries of the future: what was won for women and for racial and ethnic minorities will surely be won, in the lifetimes of some of us, for gay and lesbian couples.

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The Cultural Nationalism of the New Hindu

Rajeev Bhargava

THE GENOCIDAL violence in Gujarat that killed more than two thousand Muslims last year is only the latest expression of militant Hindu nationalism. An extremist movement has been growing from strength to strength for more than fifteen years. Once only the marginal voice of a small number of Hindu ideologues threatened by the Muslim mobilization of the 1920s and stung by the inclusive nationalism of the Indian National Congress, the Hindu nationalist movement now boasts of the most powerful cluster of political and cultural organizations in the country. Once a mere irritant to secular forces confidently defining the agenda of the country, it now shapes the common sense of the very large Indian middle class. Its goals, beliefs, emotions, and prejudices are fast penetrating the discourse of ordinary people.

Who are the Hindu nationalists and what do they stand for? What are they after? They are not a religious sect, even though they sometimes behave like one. They are not a political party, although they have a party and can not do without it. Though well-knit, they are not a single organization, nor are they driven by a single idea. They think of themselves as an Indian extended family, a *parivar*. Taken together, their networks and organizations constitute a massive right-wing arena that contains all known varieties of illiberalism.

Hindu nationalism brings together fundamentalists, traditionalists, anti-modernists, and right-wing conservatives who covet a modernization process radically different from the one begun by secular humanists such as Jawaharlal Nehru. Under its wings, there are proponents of old-style terrorism, authoritarianism, and fascism, cheek by jowl with people who reluctantly submit to the constraints of representative democracy. Present in the movement are Hindus with rigidly hierarchical convictions, who never shed their strong upper-caste leanings, as well as half-hearted egalitarians who, for strategic reasons, grudgingly include the lower castes within their fold. Among its many organizations is the avowedly culturist Rashtriya Svayamsewak Sangha (RSS–Association of National Volunteers) whose members patiently and determinedly work far away from state-sponsored sites. But the movement also has political organizations such as the Bharatiya Janta Party (BJP), whose sole purpose is to capture state power. Given these different strands, its actions are bound to be octopus-like: each tentacle appears to move independently, and yet all come together to push the body in the desired direction.

One would think that a movement with such seemingly opposed tendencies would have split, if not collapsed, by now. This has not happened because four commitments cement all the various groups: first, an abiding and pervasive anti-liberalism; second, a repugnance for the socialist left or for anything that is remotely like it; third, a belief in a distinctive and exclusivist variant of nationalism that aims to reinstate a strong, disciplined, and united Hindu nation, the *Rashtra*; fourth, and above all, a relentless antipathy to Muslims and, to a lesser extent, to Christians—and also to secularists who desire equal citizenship for all Indians.

Legacy of Colonialism

Three processes set in motion by the British in colonial India created the conditions for the emergence of Hindu nationalism. The first of these was the search for a "deeper understanding" of India. Western Orientalists imposed a set of attributes on Indian religion and society that was supposedly essential to them. They then taught these definitions of Hinduism to

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the Indians themselves, who readily learned them in the new colonial educational institutions. The second process was the introduction of separate laws and electorates for Hindus and Muslims, which created stable, neatly compartmentalized religious identities. As in many Asian countries, Indians had highly diffused and fluid self-understandings, which made it possible for them to identify easily with two or more fuzzily defined communities. Colonial classifications and census enumeration forced people to choose a single, well-demarcated communal identity. The third process was a gradual political democratization, which sharpened differences between Hindus and Muslims and generated new fears and anxieties about lower-caste assertion. A conservative, upper-caste ultra-traditionalism, driven by the anxiety to preserve a beleaguered cultural and social order, has always been a major ingredient of Hindu nationalism.

However, these processes do not fully explain why the movement took an extreme, largely negative, ethno-nationalist form centered around a xenophobic religious identity. The ideological father of militant Hindu nationalism, V.D. Savarkar, defines a Hindu as a "person who regards this land from the Indus to the seas as his fatherland as well as his holy land." By this definition, Sikhs, Buddhists, Jains, as well as the lower castes, are taken to be authentic Hindus, but Christians, Jews, Parsees, and Muslims, whose religions did not originate in this prescribed geographical area, are forever excluded from the nation.

Why has Hindu nationalism assumed this form? To grasp this, it is best to understand the mindset of the earliest protagonists of the movement. Uprooted from tradition, these people were radically uncertain of themselves. They continually failed in their efforts at self-affirmation in a modernizing world. Like other anti-modern traditionalists, they were insecure and vulnerable in a world that they could not call their own. But unlike many of the others, they were cursed with an ineluctable propensity to compare themselves with others—and to suffer, in their own eyes, by the comparison. It is of course true that identities are always formed in relation to others, and that a constitutive link exists between identity and recognition. But at play here is a pervasive pathology wherein people never perceive or understand themselves except by comparison with others.

This psychology of perverse comparison, and the resentment it produces, can be seen in extreme Hindu nationalism from its inception. The RSS, the linchpin of the movement, was founded in 1925 by K.B Hedgewar, who was disturbed by the ease with which colonial administrators ruled over a vast country like India. M. Golwalkar, Hedgewar's successor, wrote, "The European is exceptionally defective…and yet Europeans as nations are free and strong…. In spite of their ugly social order they have cherished and fostered correct national consciousness, while we [Hindus] ignore the cause of our trouble and grope about in the dark." Hedgewar was equally obsessed with the earlier failure of Hindu rulers to resist the conquering Muslims. He saw Muslims as a cohesive unit, unflinchingly committed to their religion, even fanatical about it. He saw Hindus, on the other hand, as being in a deplorable state of disunity and physical weakness. He built an entire narrative around the vulnerability of Hindus: they could not have lost political power had they been strong and united. Projections from available census reports, he argued, showed that, in comparison to the rapidly multiplying Muslims and Christians, Hindus would disappear in the next four hundred years. The idea of the Hindus as a dying race was invented in the 1920s.

This mindset leads inexorably to a militant strategy that aims at the construction of a pure culture and is sharply focused on the formation of a narrow, hardened, and belligerent identity-formation. A key element in this strategy is to mobilize the masses on ethno-religious grounds—through "stigmatization and emulation," the strategic incorporation of certain elements of the religions that it vilifies in order to beat them, so to speak, at their own game.[1] Other religions are stigmatized because they are said to demand a kind of absolute loyalty that is in tension with the equally absolute loyalty demanded by the modern state. In addition, they rank low on a scale of civilizational values in which the nationalists' version of original, pristine Hinduism scores the very highest points. But sadly, this Hinduism suppresses its

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own core values—eclecticism and diversity—and defines itself in terms of a set of anti-values, in opposition chiefly to Muslim religion and culture. For example, one of the first issues used for the construction of a religious/national identity was the protection of the holy cow. The first movement for cow protection was initiated at the end of the nineteenth century and sought to unite all Hindus against the alleged barbaric practices of Muslims that threatened the natural order of Hindu society. The cow, believed sacred by many, has long been a symbol of upper-caste Hindu identity and is therefore invested with great potential for political manipulation. The permanent subtext of such campaigns is their anti-Muslim character: all Muslims are assumed to be beef-eaters, a permanent body of cow-slaughterers.

This strategy would never succeed without a reliable, dense grid of local activists who see themselves as missionaries of the nation and pride themselves on their dedication to "Mother India." Servicing Mother India is for them not merely an abstract concept. A substantial part of the daily life of these Hindu militants is spent in patiently responding to and resolving problems of local people, mainly upper-caste families in middle-class neighborhoods across India's small towns and cities. These local networks are not explicitly political, because their main objective is to build an alternative civil society. Rather, they include schools and hospitals, moneylending agencies, and associations for children, youth, students, women, and workers. They disseminate appropriately selected and interpreted information. Much of their work is done in the *Shakha* (the local branch), where individuals drill with the *Lathi* (a long bamboo stave), play Indian games such as the *Kabaddi,* and are taught to be loyal to the Hindu nation. This appears harmless enough, but what is really taught in the *Shakhas* is a mode of conflictual, even violent engagement with the "Other," which is made the pre-condition of Hindu self-assertion.

Extreme Hindu nationalism cannot exist without an enemy. Its discourse, when it merely imagines an enemy, is quite strong enough, but it is a powerful, overweening force when the enemy is real. Hindu extremism would have petered out, its network of local activists would eventually have collapsed, and the strategy of ethno-religious mobilization would surely have failed had a parallel and similarly paranoid discourse of exclusion and imagined hurt not been constructed by Muslim bigots.

In the 1940s, together the Hindu and Muslim extremists generated a vicious inter-communal syndrome, a diseased network of neurotic relations so completely poisoned and accompanied by such a vertiginous assortment of negative emotions that the two communities plummeted into deeper and deeper estrangement. A conspicuous feature of this syndrome is that groups make impossible demands on each other that cannot be fulfilled ever, conjure up imaginary grievances, and insist precisely on that which hurts the other most. They obsessively desire at one time the very thing that the other wants, at other times they insist that such a thing cannot be desired—always with the sole purpose of negating the claims of the other. So the two extremisms feed on each other. Muslim extremism makes it possible for ordinary Hindus to believe that there is a real enemy out there and to see anti-Muslim discourse less as the hysteria of disturbed people and more as a necessary response to possible oppression and injustice.

Present-Day Influences

Perverse comparison—feelings of inferiority, envy, resentment, and negative stereotyping of the Other—propels extreme Hindu nationalism even today. Invariably, Hindu nationalists affirm their community or religion not for its intrinsic quality but with the sole intention of denying and denigrating other religions and communities, always playing one against the other. They simultaneously valorize and stigmatize religions such as Islam and Christianity. A culture stewed in poison, embittered and weakened, focused ceaselessly and aggressively on revenge is skillfully fostered on Hindu streets. A huge propaganda machinery of lies and falsehood is constantly at work furnishing negative stereotypes. Envy accumulated over the years is such that the very existence of "others" appears to be an unbearable humiliation.

And yet, isn't the psychological animus undergirding extreme Hindu nationalism on the decline? Since the partition of the country,

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Muslims constitute only 11 percent of the population. Other minorities are much smaller. British imperialism is present only in the traces it has left behind. The prestige of Western culture has fallen off in direct proportion to the growth in Indian cultural self-confidence, something inevitable with more than a half century of democratic self-rule. Comparisons with other cultures need no longer engender feelings of inferiority and inadequacy. Upper-caste Hindus dominate all political institutions in independent India and are economically and culturally powerful. More important, the organizations that sustain Hindu nationalism have become considerably stronger since the 1980s. The power and visibility of the RSS and its affiliates such as the Vishwa Hindu Parishad (VHP—World Hindu Organization) have grown with time. The BJP captured more votes in the last election than any other party and leads the national coalition. More recently, the discourse of the RSS appears to have "normalized." Why then should the mindset that typifies a resentful, crippled, and powerless people still be so dominant? Why does the majority in India feel and behave like a persecuted minority?

I BELIEVE THERE are two answers to this question. The first was offered by the Scottish philosopher David Hume, when he drew attention to how splenetic memories of the past fester in the mind and how negative emotions are bequeathed from one generation to another: "Nothing is more usual than to see parties which have begun upon a real difference, continue even after the difference is lost. When men are enlisted on opposite sides, they contract an affection to the persons with whom they are united, and an animosity against their antagonists; and these passions they often transmit to their posterity." The real basis of rivalry, inferiority, and resentment is long gone, but its memory continues to produce embittered and poisoned minds.

A second reason, however, is more salient. Hindu nationalists have been quick to discover that this strategy doesn't simply meet pre-existing psychological needs, but rather sustains and, just when they appear to be vanishing, resuscitates them. Earlier, the mindset created the strategy it needed. Now, this strategy rekindles the mindset for which it was devised in the first place. And so, from being a predominantly personal or collective device to overcome the simmering tension eating into the soul of a marginalized group, it now makes possible a political bid for total hegemony. Hindu nationalists now make instrumental use of memory, emotion, prejudice, religious difference, and generalized deprivation to advance their extremist agenda. They are inventing a new anti-Muslim Hinduism that they use to form a "vote bank" that has helped them to capture and now to retain political power.

The force of the invention was evident in 1984, when the VHP engineered the revival of a movement to liberate "sacred" Hindu sites believed to have been usurped by Muslims—an issue that has excited and invigorated Hindu nationalists for more than a decade now. *Ayodhya,* the mythical birthplace of Lord Rama, the main protagonist of the great epic *Ramayana*, remained the most evocative and significant rallying cry. Hindu nationalists claim that a temple dedicated to Lord Rama stood on his *Janam Bhoomi* (the site of his birth) until it was destroyed in the sixteenth century by Babur, the first Mughal ruler, and replaced by a mosque. Hindu nationalists contended that this mosque must be handed over to them, and in 1992, after this demand was refused, a well-armed mob led by VHP activists reduced the mosque to rubble, as senior BJP leaders looked on. For more than a decade, the demand to "liberate" the *Ram Janam Bhoomi* remained the most spectacularly effective way to mobilize extremist Hindu nationalism. As Thomas Hansen points out, "Rama became a metaphor for the essential Hinduness of Indian culture,"[2] and the restoration of the temple was made the pivot of the reassertion of Hindu cultural religious rights, violated for centuries in their own homeland.

The conversion of "untouchables" to Islam in Tamilnadu in 1981 gave the VHP the opportunity to raise the specter first of Islamic and later of Christian expansion. So did the famous Shah Bano case in which Rajiv Gandhi's government succumbed to the pressure of Muslim power brokers and passed a law legitimizing the subordination of women in Islamic courts—for the sake, it was said, of

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protecting the cultural rights of minorities. The holy cow, too, returned to the political agenda. An RSS ideologue declared recently that "Muslims have to rethink their positions on this issue which is so dear to Hindu hearts. I see the cow issue as part of the global struggle against jehadi fundamentalism."[3] Clearly Hinduism is again being reinvented on the basis of a relentless anti-Muslim campaign.

But haven't Hindu nationalists occasionally softened their aggressive views? Doesn't this show that they can abandon extremism? There is something to this. In post-independence India, both on account of the constraints imposed by a liberal-democratic Constitution and the enormous social and political power made available because of it, some Hindu nationalists, as suggested helpfully by Christophe Jaffrelot, have adopted a relatively moderate strategy that has three features.[4] First, they have moved away from a hard communalism to a soft, tradition-bound Hindu communitarianism. Second, they have accepted the need to operate by the rules of constitutional democracy, showing a willingness to forge alliances with opposing parties. Third, they have eagerly mobilized people on populist, socio-economic issues that automatically downplay an aggressive Hindu identity. The economic policy of the BJP is decidedly right wing, but the reality is that no party in democratic India can survive without at least lip service to the elimination of poverty. A gentler, much chastened Hindu nationalist party isn't unwelcome in a democracy, which must after all accommodate right-wing groups just as it must, within limits, offer space for religious communities to criticize one another. What democracy cannot afford, however, is an extremist politics driven by lies, violence, and hegemonic aspirations.

What then is the real character of Hindu nationalism? For most of the last fifty years, Hindu nationalists have mixed moderate with militant strategies and selected the appropriate combination depending on their relative strength vis-à-vis other political forces. These sudden shifts in strategy leave everyone confounded, particularly when BJP leaders speak in different tongues, change colors, and switch masks. But this bewilderment is now quite unnecessary. So long as moderation remains a strategy rather than a constitutive feature of its politics, the fundamental character of Hindu nationalism can only be extremist. It is not as if no difference exists between soft and hard Hindu nationalism, but as long as proponents of the soft line continue to make instrumental use of the hardliners, the twists and turns in the BJP's ideological journey, as one commentator aptly put it, can have only one ending: extremist nationalism.[5] There is little doubt that except during the brief period of Indira Gandhi's emergency rule, when they were gripped by uncertainty about their future, Hindu nationalists have remained committed to an overtly militant program to take over society and polity.

Why the Increased Popularity?

Hindu nationalists have been around for nearly a century. However, until as late as 1984, in the elections held after the assassination of Indira Gandhi, their political party secured a mere 2 percent of the votes. Even in 1989, the BJP garnered no more than 10 percent of the national vote. What then explains its power today? And, why did it wait so long in the wings? Why did a militant strategy that had persistently failed earlier now succeed so spectacularly?

This is a complex issue; I can address only the most important reasons here. First, the long-established Congress Party system has collapsed. The Congress Party has gone into steady decline, losing its standing as a party with a coherent program, ideology, and support base. Groups that once supported it have left and formed political parties of their own. Over the years, it has been thoroughly embroiled in scandal, controversy, corruption, and misgovernment. Worse, it has succumbed to the serpent and taken a bite of the communal apple. As a result, one can no longer be sure of its secularist commitments. The state machinery, which Nehru tried to keep impartial, has gradually been communalized. Perhaps this was bound to happen because the Nehruvian project was carried out by people who "were unwilling to engage with the masses except in a patronizing or modernizing mode."[6] Second, the fall of the Berlin Wall symbolized a world crisis not only of socialism but also of secular

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humanism. It made the revival of counter-enlightenment movements marked by religious enthusiasm possible.

The third reason is especially interesting because its roots lie outside India. The increased wealth and security of the Indian diaspora has boosted the self-confidence of its members, whetted their appetite for the reinvention of the culture and religion of their childhood, and made it possible for them to forge economic links with their homeland. They have used this newly invented identity not only to extract social and political benefits in their adopted country, but also to support extremist ideas and fund illiberal movements in the country of their origin. Their long-distance nationalism parallels that of the Sikh, Muslim, and Jewish diasporas.

Our explanatory story would be woefully inadequate, however, unless we mention a fourth, and perhaps most important, reason. The success of Indian democracy and rapid changes in the economy in the neoliberal era brought wealth and enhanced social status to many hitherto marginalized urban and rural people. The mental world of such people is marked by the desire for a new framework of identity. Because secular humanism legitimated a social and political order that offered them few benefits, they are drawn to its opposite, an ideology closer to their own views. Feelings of uncertainty and danger always accompany such social transformations. Not surprisingly, traditional elites are dismayed by any change to the existing order. Upper-caste violence that followed the introduction of job quotas for the "backward" classes underscores this point. However, the new middle classes are no less anxious. This is partly because they know that gains that accrue suddenly and unexpectedly can as swiftly be lost. But it is due in part also to the social logic inherent in such transformations: the changes that brought benefits to these people open up new possibilities for others too, and raise the prospect of upward mobility for all marginalized social sectors. Those at the bottom of the ladder then begin to be seen as a threat to the new middle classes. A collective egoism overwhelms everyone; justice begins to be seen as the morality of the weak; and every loss of privilege is fiercely resisted.

There is, in India today, a general feeling of insecurity and danger. The upper castes want to withdraw "reservations" (quotas) for the lower castes; the rich want to suspend welfare provisions for the poor; and among Hindus there is an outcry against minority rights. Under these circumstances, it was not surprising that the militancy of certain minorities—the separatist movements in Sikh-dominated Punjab and Muslim-dominated Kashmir—would ignite an already inflamed sense of vulnerability. When the Rajiv Gandhi government passed a bill that placed the retrogressive family law of the Muslims above the criminal law of the state, the carefully fostered and malicious talk of appeasement no longer appeared fictitious; secularism was now seen as an ideology that favored minorities. Perverse comparison induced, once again, the sense of deprivation and disadvantage. International terrorism by Muslim extremists or cross-border terrorism in Kashmir has not helped matters. September 11 was a shot in the arm for Hindu nationalists (as it must have been for Christian fundamentalists also). The lies and exaggerations about a largely imaginary threat were now anchored in real events. A discourse for which there were few takers earlier began to sound plausible.

Globalization has introduced new anxieties. Middle-class Indians began to wonder why India was not a superpower. Given the talent, intelligence, and skill possessed by Indians, why was their country still weak, still on the margins of international affairs? Half-baked arguments that the weakness of India is caused by a lack of a killer instinct, because Indians do not see themselves as winners, went hand in glove with a longing for a new India and a new Hindu. The traditional self-image of upper caste Indian males is that they are comfortably androgynous, morally upright, inward-looking, and otherworldly. Now they began asking themselves if these very qualities were not holding them back. Surely, they thought, this is not the stuff of which world champions are made! If India is to become a power in the globalized world, Indian men must shed their moral self-righteousness and acquire a practi-

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cal sense, a manipulative, this-worldly cunning and aggressiveness. They must jettison talk of justice that demands concessions to the weak. For centuries, Indians have been obsessed with their families, with their mothers or their children. It is time that they begin to think in terms of larger collectivities, such as the nation. Thoughts like these among the new middle class have provided fertile ground for the expansion of an aggressive and resentful Hindu nationalism. But the target of this resentment is a largely imaginary enemy, now one of the weakest, most frightened, and beleaguered communities in India.

Hindutva (extreme Hindu nationalism) cannot survive without a real or imagined enemy. The smallest action of Muslim extremists energizes Hindu nationalism, revives or exacerbates the inter-communal syndrome, and gives popular legitimacy to Hindu nationalists. When the Muslims don't play ball, Hindu extremists are compelled to invent their enemy. But imagined threats from an invented enemy cannot sustain a movement indefinitely. They are a poor substitute for real action from real people. Ideally, extreme Hindu nationalists want the Muslim enemy neither to disappear altogether nor to become too strong. The presence of a real but weak antagonist suits their purposes perfectly, and this is precisely what Indian politics and society now present to them.

Hannah Arendt once wrote that the severest form of hatred is reserved for those who are wealthy but have lost their political power or public function. Alas, an even more cruel treatment may befall those who are powerless, poor, and seen to be politically redundant. The violence in Gujarat was not an accident. It is built into the dominant mindset of these terrible times.

POSTSCRIPT: Mumbai, as Bombay is now known, was rocked in August by two powerful bombs that killed 52 and injured more than 150 persons. The explosions, recalling the infamous bombing in 1993 of the Bombay Stock Exchange, occurred at the Gateway of India outside the legendary Taj Hotel and in Zaveri Bazaar, an old busy street of mostly Gujarati traders, the first with the intention of disrupting business and travel and the other serving as some kind of retribution for the injustice against Muslims in Gujarat. Fear and foreboding gripped Indians. Would Mumbai be ripped again along communal lines? Would there be yet another orchestrated "reaction" against ordinary Muslims? Would life grind to a halt, and would the state helplessly watch another macabre round of massacres?

What transpired in the following week was miraculously different. Terrorism was unambiguously condemned by everyone, including all major Muslim organizations. In Zaveri Bazaar, Hindu and Muslim neighbors helped each other recover from the blasts, picked up the shards from their lives, and determinedly came out to work the very next day. There were peace and solidarity marches in the city. Hindu hard-liners did not open their mouths, even BJP leaders showed restraint. On television and in newspapers, opinion makers collectively resolved not to allow communal division to widen; vowed to preserve the cosmopolitan cultural character of this vibrant, hardworking, and fun loving city; and stressed the significance of citizenship over community identity.

I cannot explain all this. Remarkably, a new space is opening up where ordinary people have begun to register not just their protest against terrorism but also against the political use that might be made of terrorist attacks. Could it be that a hidden, rusted, convoluted, self-correcting mechanism is slowly cranking back to life? I say this because all of a sudden I hear people making a distinction between Muslim terrorists and ordinary Muslims and condemning the persistent disregard for the impartial implementation of the rule of law that has left many Muslims alienated. If injustices are not addressed through routine legal procedures, then some people are bound to resort to extreme measures. If terrorism is to be checked, the ground that breeds it must not be watered. Till recently this was talk in a few academic circles, not where public opinion is forged.

Can one hope that the tide has begun to turn? Is something new afoot in India? Perhaps. Except that alongside all this there is an alarming new development. There are reports that educated but disgruntled young Muslims are embracing terrorism and in particular that Gujarati Muslim youth are crossing over the border into Pakistan. The homegrown terrorist, once a Kashmiri phenomenon, appears to be spreading into other parts of the country. This is the secularist's ultimate nightmare. ●

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1. Christophe Jaffrelot, *The Hindu Nationalist Movement and Indian Politics*, (London: Hurst & Company, 1996), pp. 11-79.

2. Thomas B. Hansen, *The Saffron Wave* (New Delhi: Oxford University Press, 2001), p. 174.

3. Quoted in the *Outlook*, March 10, 2003.

4. Christophe Jaffrelot, *op cit*., pp. 158-192.

5. Vidya Subrahamaniam in *Times of India*, June 29, 2003, in a report on the latest attempt by the Indian prime minister, Atal Bihari Vajpayee, to reach an out-of-court settlement on the *Ram Janam Bhoomi* dispute.

6. Stuart Corbridge and John Harriss, *Reinventing India*, (Cambridge:Polity, 2000), p. XIX

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In Defense of State Building

States, Rights, and Justice

Neil A. Englehart

STATE FAILURE has become an increasingly important policy concern since 9/11. Strengthening or reconstructing failed states has even become an explicit goal of American foreign policy. Yet many Americans across the political spectrum regard states with deep suspicion and abiding hostility, as instruments of oppression. In truth, states are more likely to protect human rights than any other form of political organization. Acknowledging that potential is today a moral and political imperative.

The evil that states do is well known. There are abundant examples: from the brutality of the Thirty Years War to the Stalinist purges, the Holocaust in Nazi Germany, and the Rwandan genocide. Because its repressive capacities are so clear, political theorists seek to protect us from the state (Locke), to divide and limit its power (Madison), to liberate us from it (Marx), or to dissolve it entirely (Foucault). Yet Hobbes's picture of life without the state—poor, nasty, brutish, and short—still resonates. States can only be called oppressive if there is an alternative available, a more promising political order.

States dominate our minds as much as they dominate the globe. The conceptual hegemony of the state is so great that there has been little serious thinking about alternative arrangements. Anarchist visions may sound liberating, but only because they assume that life under anarchy would be much like it is now—only better. In fact, anarchists depend on the very order they seek to abolish, assuming that people will be treated as free and equal, able to make uncoerced choices outside the protection of the state. Their utopian visions set the parameters of critiques of the state, but they seldom recognize that the necessary substructure of their utopia doesn't exist "nowhere"—it exists only where states have established law and order.

In real life, the alternatives to the state are more violent, more coercive social and political orders dominated by warlords and gangs. Not quite the Hobbesian war of all against all, they are rather wars of group against group, dividing society and destroying the possibility of a peaceful public sphere, of civil society, rights, and social justice. The corollary to the oppressiveness of non-state politics is that, contrary to our commonsense understanding, states are relatively liberating and egalitarian. Compared to actually existing alternatives, states have more potential for protecting human rights, human security, and international peace than any other political order. That's why state building is so important.

States and Rights

Modern states are distinctive in two respects: they claim and mostly wield a monopoly of the use of violence and they are bureaucratically organized. The monopoly of legitimate force eliminates the widely dispersed violence typical in other kinds of polities. In medieval Europe, for example, violence was legitimately used by peasant villages, urban guilds, city governments, the nobility, and the church—all in addition to, and independent of, the king. By monopolizing violence, modern states sharply reduce its overall level, enabling ordinary people to live more securely. States create what Norbert Elias calls "pacified social spaces," which permit citizens to pursue their own interests without worrying about their personal safety every minute of every day.

An important reason that states are able to secure this monopoly is that rational-legal bureaucracies give them an unprecedented capacity to control society. Although people com-

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monly rail against bureaucratic inefficiency, these complaints measure bureaucracies against an ideal of efficient performance rather than against any actually existing alternative. In most of the administrative systems that preceded the development of modern bureaucracy, offices were a form of property or ascribed status, held as private entitlements. Officials were therefore much less responsive to the public or higher authorities, and social control—including the control of violence—was much less effective.

Bureaucracies are often accused of being intrinsically oppressive because they are so much more effective at gathering information and enforcing laws and policies than other kinds of administrations. This efficiency is indeed sometimes dangerous, but non-bureaucratic systems are *always* dangerous because there is no systematic accountability, no way to check the abuses of the powerful.

Because of their size and complexity, rational-legal bureaucracies are much more rule-bound than the alternatives. Even if the rules are unjust, their systematic nature promotes accountability. Ordinary citizens, nongovernmental agencies (NGOs), and international agencies can much more easily identify the agents of injustice; they will have an address for protests and recommendations; they will know whom to blame when things go badly. The letter-writing campaigns of Amnesty International and the assessments of UN human rights rapporteurs depend on this accountability. Without it human rights activists are helpless, which means that they are helpless in countries that are stateless.

The monopoly of violence and rule of law together create the potential for rights—legally enforceable entitlements vested equally in all citizens. Of course, many states fail to vest rights equally or to defend the rights they claim to recognize. However, without states the legal enforcement of rights is almost inconceivable. Indeed, despotic regimes often attack their own bureaucracies, precisely because they represent a point of accountability and transparency, and thus may empower those outside the regime.

Because our commonsense understanding of states is formed from within the environment created by those same states, it is not surprising that we lack a comparative understanding of the alternatives. It is also not surprising that we chafe against the failures and imperfections of states, holding them—as we should—to an ideal that we can conceive only because of the social order that is potential in them.

State Failure

No one who has lived in a failed state will feel any attraction to stateless utopias. State collapse in places such as Somalia and Afghanistan quickly gives rise to extremely unattractive forms of power and dominance, based on the localized command of violence.

In Somalia, the state fell as the result of a multiparty civil war, which is still unresolved twelve years after the central government's demise. People have been forced to rely for protection on lineage networks that sponsor armed gangs. These small-scale networks are dominated by male elders, headed by warlords. They dispense traditional justice or *sharia* law, often inflicting summary or exemplary punishment with little regard to issues of due process. Conflicts outside the lineage are resolved through force at least as often as through negotiation, with weaker groups forced into subordination by stronger ones. Individuals who cannot secure the protection of one or another network are exposed to severe oppression.

In Afghanistan, the United States and Pakistan armed several *mujahideen* groups against the Soviet-supported regime. After the regime fell, the United States lost interest in the country, and the various armed groups drifted into civil war. Ordinary citizens were forced to make peace as best they could with locally, often temporarily, dominant groups, but the conditions of the civil war were such that most were exposed to violence and extortion from more than one. Out of this catastrophe the Pakistani-supported Taliban emerged dominant. Yet the Taliban never actually reconstituted the Afghan state. Its members never controlled the entire country, and in the areas they did control they never attempted to rebuild the civil service or to provide basic services such as health and education. Although they were able to enforce a few radical and repressive policies—the sub-

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ordination of women, for example—their capacity to formulate and enact policy in any systematic way was weak. The demands of the Clinton and Bush administrations for the surrender of Osama bin Laden rested on the assumption that the Taliban had the capacity to deliver him, if they so chose. We will never know if this assumption was correct, but it is likely that one of the reasons bin Laden chose Afghanistan as a refuge was precisely because it lacked a state structure capable of disciplining its own citizens, much less a wealthy guest with an armed retinue.

Such collapsed states rarely recover spontaneously. Some regions of Somalia have begun to stabilize, but it remains unclear whether there will ever again be a Somali state. There is little evidence that Afghanistan was beginning to stabilize as a state prior to the U.S. invasion. At the extreme, in some African countries characterized by what William Reno calls "warlord politics," rulers incapable of creating states by monopolizing violence or building bureaucracies have abandoned any pretense of serving a greater public good or enlisting popular support. Instead, they exploit fictive legal sovereignty to contract with buccaneer capitalists and foreign mercenaries. They maintain their power with a steady flow of revenue from embezzled development aid and natural-resource exploitation by foreign companies, privatizing the public sphere and abandoning their own populations.

The typical result of state failure is the creation of hierarchical and exploitative protection networks. These are oppressive social orders, dangerous to their own people, to their neighbors, and to the international system.

Nation Building and State Building

Given the human disasters caused by failed states, there are good ethical and pragmatic arguments for assisting in their political reconstruction. Yet such efforts have been anathema in American politics. Debating Al Gore, for instance, George W. Bush repeatedly attacked the Clinton administration for supporting what he pejoratively called "nation building," and Gore did not attempt to defend it (nor had the Clinton administration been all that engaged in the hard work of political reconstruction).

It is worth distinguishing state building—the creation of the institutional capacity to govern—from nation building, which involves bringing together disparate and antagonistic social groups in a common government. But in cases like Somalia and Afghanistan, both are necessary, and the two probably have to be attempted at the same time. This is the task the Bush administration claims to be committed to in Afghanistan and Iraq. Ironically, the very people who decried "nation building" a few years ago have been compelled to practice it. According to the Bush administration's 2002 statement of national security policy,

> America is now threatened less by conquering states than we are by failing ones. . . .Weak states, like Afghanistan, can pose as great a danger to our national interests as strong states. . . . Poverty, weak institutions, and corruption can make weak states vulnerable to terrorist networks and drug cartels.

Many on the left echoed these sentiments—indeed, in their concern with global equity and justice, some leftists were well ahead of the administration in seeking to address these issues.

It is difficult to see how the dangers posed by failing states can be addressed without building state institutions that create an environment in which citizenship and civil society can thrive. We have very limited experience with such activities. The reconstruction of Germany and Japan has been touted by the Bush administration as a model for rebuilding Iraq. However, those two cases involved relatively straightforward operations, because neither state building nor nation building were required. Both countries had been homogeneous nations governed by well-functioning states before the war, and only required rehabilitation under more democratic institutions. Even so, this more modest goal required years of military occupation.

We now face quite a different set of challenges. Iraq by all accounts had a well-functioning bureaucracy prior to its invasion of Kuwait, but economic sanctions, Baathist brutality, and two wars have severely eroded state capacity. Nor is there a homogeneous Iraqi nation. The Afghan state was completely de-

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stroyed in the long struggle against the Russians and the endlessly divisive civil war that followed. The infrastructure and skill base that it depended on has been destroyed. Afghanistan and Iraq thus require simultaneous state building and nation building projects. Although military occupation seems necessary to the process, it is likely—especially when it is unilateral—to delegitimate any state system that it produces.

The closest approximation to these missions is not postwar Japan and Germany, but Somalia in 1992-1993. There, state institutions had collapsed completely and needed to be reconstructed from the ground up. However, the U.S. mission in Somalia was handicapped from the beginning. The Joint Chiefs of Staff under the first Bush administration removed the civil affairs units from the plan for "Operation Restore Hope." These are reserve units normally activated to serve as liaisons with the local population. They specialize in foreign cultures and languages and are employed to collect information, provide medical support for local populations, handle refugee flows, and distribute food. They would seem to be key to the mission of "restoring hope," and their omission from the operational plan was startling. It certainly suggests a lack of commitment to, or understanding of, the difficult work of state building.

State Building and Democracy

Most of our post–cold war interventions have been described as promoting democracy, in the hope that democratic politics will in turn solve the problems of state capacity. However, if a country's problems stem from a crisis of state institutions, it is unlikely that democracy first, and democracy alone, will solve those problems. In fact, the state may have to be rebuilt *before* a democratic government can rule. Democrats can build state capacity, probably more effectively than autocrats. But they require a minimum threshold of state capacity in order to govern, whereas dictators may be able to maintain their power even without an effective state. Indeed, many dictatorships are simply failed states hiding behind a veil of legal sovereignty and international recognition.

Promoting democracy without a minimally functional state may even, unfortunately, be counterproductive, discrediting any possible democratic future. A prime example is U.S. policy toward Burma. The U.S. government has enacted economic sanctions against Burma that simply expand investment opportunities for Chinese and Singapore firms with little interest in democratic politics. The U.S.-government-funded National Endowment for Democracy funds opposition groups dedicated to destroying the dictatorship, but so far they have been ineffective. These efforts are meant to press the Burmese junta to respect the results of the 1990 election and allow the National League for Democracy (NLD) to assume power. What would happen in the unlikely event that the generals were to accede to this pressure and allow the NLD to assume power? Probably we would see the familiar disaster of state collapse and localized violence. The Burmese civil service, police, and justice system have been so corrupted under military rule that they are incapable of functioning independently. Only the military-run system of Peace and Development Councils provides any administrative structure in the country. The NLD would have no political or administrative instruments with which to govern if the military were to withdraw from politics, and the ensuing chaos could well discredit democracy for years to come. This is exactly what happened in Burma in the 1950s, laying the groundwork for a coup by what was initially a popular military junta.

How To

The first step in promoting democracy must thus be a rehabilitation of the Burmese state, so that a civilian regime could effectively govern it. In Burma—and in other failing states—we should aim at rehabilitating the civil service and police forces, creating a more functional state amenable to civilian rule.

The Australian government's "Human Rights Initiative for Burma," which trains middle-rank civil servants and judicial officials in international human rights norms, is one small example of such a program. Opponents of the Burmese government criticize the program for extending aid to an illegitimate regime. Furthermore, they claim, the program

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will have no results, because these officials are unable to protect human rights in the present context. But surely it would be useful, if and when a democratic transition occurs in Burma, to have officials in place with some idea of international norms. They may not be willing or able to act now, but they may help smooth a transition once it comes.

To those who believe that the Burmese state is already excessively strong, it may seem perverse to advocate strengthening the civil service. However, the abuses that most affect ordinary Burmese—the expropriation of land, the conscription of labor, the arbitrary exaction of goods and funds, and the disastrously failing economy—are the products of state failure. Because the regime has repeatedly purged the bureaucracy, and because it pays such low wages that civil servants are forced into corruption, it has lost the ability to rationally plan and effectively execute policy. A more effective bureaucracy would likely reduce the suffering, not increase it. Furthermore, the military intelligence wing of the army, which orchestrates the repression of the opposition, is the one bureaucracy that does not need rehabilitation: it is already well-staffed, well-trained and well-equipped. Thus, programs to strengthen other state agencies won't increase the repression; they are more likely to improve the capacity to deliver services to citizens and ameliorate the chaotic economic and legal environment. This would considerably ease the birthing pains of democracy, when its time comes.

Such a strategy would draw on the three main lessons that should be learned from U.S. attempts to assist in state building since the cold war:

1. Preventing state failure is preferable to intervening after a collapse. The Clinton administration set up a State Failure Task Force to identify the early warning signs of political collapse. Such efforts should continue and should be supplemented with foreign aid programs aimed at strengthening threatened states. After states collapse, direct military intervention may turn out to be the only option, but such interventions are dangerous and unpredictable.

2. Civilian programs are likely to be more effective than military interventions. Aid programs to assist in building state capacity could easily be made palatable to many governments, even authoritarian governments, and would certainly cost less than dispatching troops. Massive military interventions are likely to be counterproductive, with occupation by foreign troops discrediting the state building effort. Wars do not make states; wars destroy them.

3. Multilateral action, preferably through international institutions to which the target country already belongs, are likely to be seen as more legitimate than unilateral action. Multilateralism can be justified in terms of building an international system that minimizes threats to all its members, both states and individuals, and would reduce inevitable suspicions about the motives behind unilateral action.

Such an approach to state failure would serve U.S. interests by creating a more stable international system and improving our domestic security, but there are also ethical reasons to promote it. Strong states capable of policing their own territories, accountable for the activities of their agents, and participating in international trade and multilateral institutions are better for their own citizens as well as for other states. They can keep the peace, create security, control disease, police terrorist cells, and minimize refugee flows and humanitarian crises. They provide, moreover, the basis for legally enforceable civil and political rights, and for political and legal accountability if such rights are violated. If failing states are part of the problem of creating a more just domestic order, strong states must be part of the solution. ●

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Humiliation or Solidarity?

The Hope for a Common European Foreign Policy

This article was written in response to a statement, authored by Juergen Habermas and co-signed by Jacques Derrida, published in Frankfurter Allgemeine Zeitung *on May 31, 2003. It called upon the nations of "Kerneuropa" (Donald Rumsfeld's "Old Europe"—France, Germany, Italy, Spain, Benelux, and Portugal) to adopt a common foreign policy. The Habermas-Derrida article was called "February 15th, or What Binds Europeans Together"—a reference to the day in 2003 on which mass demonstrations against the Iraq War were held in London, Rome, Madrid, Barcelona, Berlin, and Paris. It was also the day on which, in Habermas's words "the newspapers reported to their astonished readers the Spanish prime minister's invitation to the other European nations willing to support the Iraq war to swear an oath of loyalty to George W. Bush, an invitation issued behind the back of the other countries of the European Union." Other European philosophers (Umberto Eco, Adolf Muschg, Fernando Savater, and Gianni Vattimo) published statements along the same lines in the leading newspapers of their respective countries, also on May 31. The text below, representing an American reaction to the Habermas-Derrida initiative, was published in German in* Sueddeutsche Zeitung *on May 31. The Habermas-Derrida article was published in English in the September 2003 issue of* Constellations.

Richard Rorty

President Bush's national security adviser has said, according to newspaper reports, that Russia will be forgiven, Germany ignored, and France punished. Whether or not Condoleezza Rice actually used those words, they express the attitude of the Bush administration toward nations that failed to join the Iraq War coalition. Disagreement with Washington by foreign governments is being treated by the Bush White House not as honest difference of opinion but as the failure of knaves and fools to accept guidance from the wise, farsighted, and benevolent.

Rice herself (the former provost of my university) is a very sophisticated and knowledgeable scholar, and so it is unlikely that she thinks of European leaders in any such simplistic way. But her insistence on the need for America to retain total control of global affairs is consonant with the remark that the American press is now attributing to her. Presumably she thinks that people such as Joschka Fischer and Dominique de Villepin, though neither fools nor knaves, must nevertheless be publicly humiliated, in order to help ensure a stable world order. For such stability, on her view, will be possible only if America's hegemony goes unchallenged.

More frightening than the bullying tone adopted by President Bush's advisers is the fact that European heads of government and foreign ministers are now reverting to their bad old habits. They are competing with one another for Washington's favor. After so many decades of dependence, it is very hard for Europe's leaders to stop judging their success in foreign affairs by the extent to which they are on cordial terms with the great imperial power. But just insofar as they continue to do this, it will be easy for Washington to set them against one another—to make them behave like schoolchildren vying for the teacher's favor.

Juergen Habermas and Jacques Derrida argue that "Europe must, within the framework of the United Nations, throw its weight in the scale in order to counterbalance the hegemonic unilateralism of the United States." If the statesmen of "Kerneuropa" adopt the stance that Habermas and Derrida recommend and

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act in concert to assert their independence of Washington, the U.S. government will do everything possible to turn American public opinion against them. Refusal to accept the American magisterium will be viewed by most of the American media as a sign of moral weakness. Washington will also do its best to set the members of the European Union against one another, in order to ensure that Kerneuropa's audacity does not become an example for the EU as a whole. For the last thing Washington wants is a Europe that is sufficiently united and self-confident to question America's hegemony. If the citizens and governments of Kerneuropa act as Habermas and Derrida hope they will, Washington will use every trick in the book to get them back in line—to make sure that their countries' votes in the United Nations are determined by decisions made by Rice and her colleagues on the National Security Council. For Bush's advisers suspect that if the EU had held together—if its member governments had been unanimous and vociferous in their repudiation of Bush's adventurism—they would never have been able to persuade the American public to agree to the war in Iraq.

If the citizenry and the governments of Europe do not seize the hour, if they do not carry through on the repudiation of American unilateralism manifested on February 15, Europe is unlikely ever again to play a significant role in determining the future of the world. The leaders of France, Germany, Benelux, Italy, Portugal, and Spain cannot postpone the choice they have to make: whether to accept the humiliating subservience that Washington hopes to impose on them or to break free by formulating and pursuing foreign policy initiatives to which Washington will react with incredulous outrage.

For Americans who were horrified by the willingness of their fellow citizens (and of the Democratic Party) to support Bush's Iraq War, the acquiescence of European statesmen in American unilateralism would be a tragedy. For if Washington does force Germany to beg not to be ignored and France to plead for relief from punishment, then the next time an American president decides to embark on an exciting military adventure there will be no significant countervailing pressure from abroad. Remembering what happened the last time that Washington's will was defied, European governments will be loath to instruct their representatives at the UN to question the latest American initiative.

The Bush administration's view that a permanent *pax Americana*, one whose terms are dictated by Washington alone, is the world's only hope has as a corollary that the United States must never permit its military power to be challenged. That claim is made explicit in a policy statement titled "The National Security Strategy of the United States," which asserts, "Our forces will be strong enough to dissuade potential adversaries from pursuing a military build-up in hopes of surpassing, or equaling, the power of the United States."

It is possible that even Democratic presidents will, in the future, reiterate this claim to permanent hegemony. The bullying tone adopted by the Bush administration may be one that all future American presidential candidates feel compelled to adopt in order to show themselves "strong" and "resolute" in "making war against terrorism" (an expression that will be invoked, as David Bromwich has pointed out in these pages, to excuse anything the American government may choose to do). This may be the case even though men like John Kerry, Howard Dean, and Richard Gephardt (the most plausible candidates for the Democratic presidential nomination next year) understand, as President Bush does not, that no empire lasts forever. They are farsighted enough to know that American economic and military dominance is bound to be transitory, and to suspect that insistence on perpetual military supremacy will, sooner or later, produce a confrontation with China, Russia, or both—a confrontation that may end in nuclear war. But this knowledge may not suffice to make them change the direction of American foreign policy.

This means that the European Union is the only likely sponsor of an alternative to Washington's project of a permanent *pax Americana*. The leaders of the still-fragile regimes that govern Russia and China are too preoccupied with their own hold on power, and with domes-

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tic problems, to ask themselves questions about the best course for the world as a whole. Their resentment at Washington's arrogance will remain tacit. They can afford to wait for their own day to come—the day on which they tell Washington that they can and will challenge its military power. If America refuses to recognize that that day will come sooner or later, and if Europe does nothing to offer an alternative scheme for world order, then nothing is likely to change. Sooner or later we shall recreate the situation that prevailed during the cold war—nuclear powers daring each other to be the first to launch their missiles.

THE RULERS OF at least a dozen countries will soon have their fingers on nuclear triggers. To believe that Washington can forever hold all these rulers in awe would be folly, yet it is a folly that seems likely to prevail. "The National Security Strategy of the United States" makes no reference to eventual nuclear disarmament, only to nonproliferation, where "nonproliferation" means that only regimes that acknowledge American hegemony have the right to possess nuclear weapons. That document pretends that the danger of nuclear confrontation ended when the cold war ended and takes for granted that American and Russian submarines, each of them armed with enough warheads to destroy ten great cities, will lurk beneath the oceans for generations to come.

Prior to the Bush administration, American statesmen usually paid lip service, at least, to the idea that the *pax Americana* was a transition to something better. Most of them realized that American hegemony was a makeshift that would have to do until something more enduring became possible—something like a veto-free United Nations functioning as a global parliament, equipped with a permanent peacekeeping military force and able to carry out a program of global disarmament. (I once heard a former Republican secretary of state say, in private, that he would be willing to trade a considerable measure of American national sovereignty for nuclear disarmament.) For Bush and his advisers talk of such a rebuilt UN is pointlessly idealistic, a refusal to face up to reality, a romantic retreat into a dream world.

If any projects for a new international order put forward by the EU are to be of use, they will have to embody the idealism that America has seemingly become unable to sustain. The EU will have to put forward a vision of the world's future to which Washington will react with scornful mockery. It will have to offer proposals for rewriting the Charter of the United Nations and for putting the UN in charge of a program of global nuclear disarmament. It will have to dream dreams that will strike Realpolitikers as absurd. But, as Habermas and Derrida point out, some of Europe's recent dreams have come true. They are right to say that Europe has, in the second half of the twentieth century, found a solution to the problem of how to transcend the nation state. The EU—just as it stands, even prior to the adoption of a constitution—is already the realization of what the Realpolitikers thought was an idle fantasy. If the sense of shared European citizenship becomes entrenched in the first quarter of the twenty-first century in the way in which the sense of shared American citizenship became entrenched in the last quarter of the eighteenth century, the world will be well on the way to a global confederation. Such a confederation has been recognized, ever since Hiroshima, as the only long-term solution to the problem created by nuclear weapons.

"Why," Habermas and Derrida ask, "should not Europe . . . devote itself to the broader goal of defending a cosmopolitan world-order based on international law against competing initiatives?" Why not indeed? If Europe did that, it might just save the world, something that American policy cannot do. At best, America's "national security strategy" can only postpone disaster. It can only keep things going for another generation or two. If there is ever a time when public opinion must force politicians to be more idealistic than they feel comfortable being, this is it. For all the reasons Habermas and Derrida give, the citizens of Kerneuropa are in the best position to exert such pressure.

If February 15 comes to be seen, as Habermas and Derrida hope it may, as the "birth of a European public sphere," the beginning of a new sense of shared European identity, that would change everyone's sense of what is politically possible. Such an upsurge

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of idealistic self-redefinition would be responded to around the world, in the United States and China as well as in Brazil and Russia. It would break the logjam that we are now trapped in. It is, as far as I can see, about the only thing that might.

Bush's apologists in the American media are likely to dismiss such initiatives as Habermas's and Derrida's as just further examples of the envious and resentful anti-Americanism that is recurrent among European intellectuals. Such a charge would be completely baseless. Both philosophers have profited from their frequent and extended visits to the United States to gain a deep and thorough understanding of America's political and cultural achievements. They are well aware of America's world-historical role as the first of the great constitutional democracies, and also of what America has done for Europe in the years since World War II. They appreciate that it was idealistic Wilsonian internationalism in the United States that led to the creation of the United Nations. They know that the unilateralist arrogance of the Bush administration is a contingent misfortune—neither inevitable nor expressive of something deeply embedded, and irredeemable, in American culture and society.

Both Europe and America contain many millions of people who see clearly that, despite all that America has done for the cause of human freedom, its assertion of a right to permanent hegemony is a terrible mistake. Americans who realize this need all the help they can get to persuade their fellow citizens that Bush has been taking their country down the wrong path. The solidification of the European Union into a powerful independent force in world affairs would be viewed by that segment of American opinion not as an expression of resentful anti-Americanism but as an entirely appropriate and altogether welcome reaction to the danger that the direction of American foreign policy poses for the world. ●

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To Our Contributors

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The Editors

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Is There an American Empire?

Michael Walzer

The war in Iraq has given new urgency to the debate about "American imperialism." In fact, there hasn't been anywhere near enough of a debate; the term is used routinely by critics of the war and routinely rejected by its supporters—though some of the supporters seem to believe if not in imperialism exactly, then certainly in empire. So, is Washington the new Rome? Is there an American Empire? Was Iraq an imperialist war? It seems to me that we need a better understanding of America's role in the world than this old terminology provides. Criticizing the uses of American power is now a central political task, so we had better recognize what is going on before our eyes.

Still, the easiest answer to my questions is, "Of course!" Hasn't the United States played the major role in constructing a global market? Don't we control its regulatory agencies—the World Bank, the International Monetary Fund, the World Trade Organization? Aren't most countries around the world open to the profit-seeking of American corporations and entrepreneurs? But empire is a form of *political* domination, and it's not at all clear that market dominance and the extraction of profits require political domination. Perhaps they did in an earlier age—so the history of European empires and of the United States in Central America suggests. But the central claim of free marketeers today is that political domination isn't necessary, and this claim has been endorsed from the left by Michael Hardt and Antonio Negri in their opaque but highly popular book *Empire*: "The guarantee that Empire offers to globalized capital does not involve a micropolitical and/or microadministrative management of populations. The apparatus of command has no access to the local spaces and the determinate temporal sequences of life where the administration functions; it does not manage to put its hands on the singularities and their activity." This is better understood in translation: "Empire" today does not mean anything like what we have always meant by empire. It occupies no lands; it has no center (not even in Washington); it doesn't depend on tightly controlled satellite governments; it is a postmodern entity.

Hardt and Negri's argument might be read as a (before the fact) response to people who claim that the Iraq War was a "war for oil." In reality, as the left has been saying for some time now, the control of natural resources does not require "access to local spaces" or the "microadministration" of territories and populations; it does not require colonies or satellites. The market operates to allow richer states to acquire and use the resources of poorer states—not independently of politics but without reliance on political domination. If it didn't do that, we would be much less critical of the market than we are.

Some contemporary Marxists argue that what we have today is "an informal imperialism of free trade (or an imperialism without colonies)." But this argument entails, as John Bellamy Foster makes clear in the May *Monthly Review*, a virtual identification of imperialism with capitalism: imperial power is simply "a manifestation of capitalist development in all its complexity . . ." Its political forms are only of "secondary" importance. That can't be right. If imperialism is nothing more than capitalism manifest and unfolded, if it has no independent and specifically political significance, then it isn't a useful term in political analysis. It can serve, of course, as a term of denunciation, but not of enlightenment. I shall assume that imperialism is a system of political rule—not necessarily direct rule, but rule in some strong

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sense: an imperial power gets what it wants from the governments it creates, or supports, or patronizes.

Is the United States politically dominant in this sense? We are militarily powerful, overwhelmingly so. The British navy at the height of the British Empire never came close to the firepower of the U.S. air force today; nor could it deliver that firepower as quickly or effectively around the world. It isn't clear, however, that firepower makes for imperial rule; even its more simple translation into regional alliances or local collaboration is problematic these days. Remember the old saying that you can do many things with a sword, but you can't sit on it. Modern military technology is no more comfortable. Despite the investment we have made in the most advanced weapons, the United States sometimes looks remarkably weak in the international arena, incapable of winning support for, let alone enforcing, our political policies—unless we go to war, which we can't do every time we are defied. This weakness was dramatically displayed in two events that took place just before the war with Iraq: first, the South Korean government refused to cooperate with U.S. policy toward North Korea; and then the Turkish government refused to open the way for an invasion of Iraq from its territory. Both of these were newly elected governments, chosen through the democratic procedures to which the United States is publicly committed, and we had no way to bend them to our will.

Equally noteworthy was the international opposition to the Iraq War. How can there be a global American Empire if it is also true, as we were rightly told in the left press, that the whole world was against us? It wasn't only the people in the streets who were against us, but most of the world's governments, including governments that are our clients and allies, provinces of our putative empire. If less than two years after 9/11, on the eve of a major war, we could not count on such states as Mexico and Chile—well, what kind of an empire is that? As I write today, the prospects of the United States imposing a regime of its choosing on Iraq don't look terribly good, and this after decisively winning an "imperialist" war!

"Empire" needs extensive qualification if it is to describe anything like what exists, or what is possible, in the world today. (Hence the appeal of terms such as Michael Ignatieff's "empire lite.") But perhaps there is a better way of thinking about contemporary global politics, drawing on the related idea of "hegemony." In common use today, "hegemonic" is simply a less vivid way of saying "imperialist," but it really points to something different: a looser form of rule, less authoritarian than empire is or was, more dependent on the agreement of others. Consider these words from Antonio Gramsci, the foremost theorist of hegemony—who wrote, however, in the context of domestic political struggles: "The fact of hegemony presupposes that one takes into account the interests and tendencies of the groups over which hegemony will be exercised, and it also presupposes a certain equilibrium, that is to say that the hegemonic groups will make some sacrifices of a corporate nature."* Hegemony rests in part on force, but it rests also, even more so, on ideas and ideologies. If a ruling class has to rely on force alone, it has reached a point of crisis in its rule. If it is to avoid that crisis, it has to be prepared for compromise.

Exactly how this works in the international arena, how close a hegemonic state is to a ruling class: all this still has to be worked out. I don't have a theory, only the beginning of an argument. Nor do I mean to suggest that America's current rulers accept the need for "sacrifices of a corporate nature," even when they actually make them (as they did with the Turks). George W. Bush's unilateralism is a bid for hegemony without compromise; perhaps he sees America playing an imperial—perhaps also a messianic—role in the world. But unilateralism is not, so to speak, the natural mode of American power; since World War II we have played a major role in shaping international organizations; we have negotiated alliances; and we have generally been willing to consult with our allies in responding to critical events, such as the Iraqi invasion of Kuwait, and in dealing with dangerous political or environmental tendencies, such as nuclear pro-

*Quoted in Chantal Mouffe, ed., *Gramsci and Marxist Theory* (Routledge and Kegan Paul, 1979), pp. 86-87.

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liferation and global warming. The wish to act alone is new. Perhaps it has something to do with 9/11 and the fear of future terrorist attacks. But fear is a better explanation of Bush's political strength among the American people than it is of the policies he is pursuing. Unilateralism predates 9/11; it is the product of arrogance and ideological zeal, perhaps also of a certain recklessness; it reflects a view of American power as inaccurate as that held by many of Bush's critics. In the contemporary world, imperial rule is an exercise in futility—but a dangerous exercise nonetheless.

IT IS FUTILE for three reasons: first, Americans don't have the capacity or, I suspect, the stomach for imperialism. We are radically unready to pay the economic costs of empire—and empire is expensive: there are profits for corporations like Bechtel and Halliburton, but only burdens for American taxpayers, who won't be willing to bear them. Nor will American mothers and fathers be willing to bear the costs in blood. We don't have an imperial army, made up of "natives" and mercenaries. We have never created an imperial civil service; we don't even learn the languages or customs of the countries we mean to rule. The American failure to impose law and order across Afghanistan, the deals the Pentagon made with local warlords, our government's refusal to invest in state building outside of Kabul—all this points, not toward the stability of imperial rule but toward the characteristic looseness of hegemony and, in the Afghan case, not a particularly honorable version of this looseness: hegemony without responsibility.

Second, our public commitment to democracy makes imperial rule very hard to justify and equally hard to manage. Even when that commitment is obviously hypocritical (for many years we supported non-democratic governments in countries such as South Korea and Turkey), we do tend, over time, to encourage or enable or at least bear with democratic transformations. At the height of the cold war, indeed, we refused to bear with (more or less) democratically elected governments in Iran, Guatemala, and Chile. And possibly we will refuse in the future, in countries such as Egypt, say, where it is radical Islamists, not "communists," who threaten to win elections. But it isn't easy for us to do that; it produces a kind of legitimacy crisis for American power—another feature of hegemonic but not imperial rule.

And third, under conditions of actual hegemony, many governments are capable of opposing the policies of the hegemonic power. And then the hegemon will, if it is wise, negotiate and compromise. In the world today, any imperialist project would encounter such strong opposition from both large and small states, and so strong a sense among people everywhere that this opposition was legitimate (see the article by Suzanne Nossel in the Summer 2003 *Dissent*) that the project is certain to fail.

When Rudyard Kipling called empire "the White Man's burden," he was stating, in the ideological idiom of his time, a simple fact: power brings responsibility with it. But the burdens of hegemony can't be borne alone; they have to be shared. A rationally governed hegemonic power doesn't act unilaterally to repel aggression or stop massacres or take on the (very difficult) work of nation building; it marshals coalitions. These will be coalitions of the willing, obviously, but the willingness has to be won by consultation, persuasion, and compromise. In recent years, our government has sought to avoid any serious version of these three necessary processes, as if its leaders want to manage the world all by themselves. That ambition is probably a better explanation of the Iraq War than any provided by the theory of imperialism. But America's leaders can't manage the world. In the aftermath of what has turned out to be a very incomplete victory in the war against Saddam, they obviously need help managing a single country. As I write, they are looking for help, but still without committing themselves to consultation, persuasion, and compromise. It is hard to gauge the learning curve of the Bush administration. But it will learn sooner or later that hegemony, unlike empire, rests on consent.

WHAT KIND OF left politics follows from this understanding of American power? We need a long response to this question, and right now I have only a short one. In Britain, in the late nineteenth and early twentieth centuries, leftists were "little En-

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glanders," that is, they advocated independence for the colonies. The United States is already committed to independence—even Bush & Co. are against "microadministration"!—and also, rhetorically, at least, to democracy. One thing the left can do is to insist that this commitment be honored not only in words but also in performance, even when the performance compromises hegemonic power. Is the United States prepared, for example, to help create a government in Iraq capable of saying no to its American patron, the way the Turks did? (I don't mean that we have to work for a Shiite theocracy.) How many "interests and tendencies" contrary to its own is our government ready to acknowledge and accommodate for the sake of global stability? What sort of "equilibrium," with what other groups, is it willing to accept? V. I. Lenin once wrote that "the task of the intelligentsia is to make special leaders from among the intelligentsia unnecessary." He didn't mean it, but the idea is useful. The task of a *democratic* hegemon is to make its own role less central, the exercise of power more and more consensual.

This will never be the chosen task of the people currently in power in Washington. Even the minimal goal of a better equilibrium, a more compromised hegemony, a more effective defense of democratic government, can only be achieved through oppositionist politics. Opposition will have to come first from inside the United States: American liberals and leftists should be advocates of self-limitation, which would be the real meaning of signing on to (and then upholding) instruments such as the Anti-Ballistic Missile treaty, or the Kyoto accords, or the International Criminal Court—and also of accepting greater mutuality in world trade and opening our doors to third world imports. All these involve qualifications of hegemony, the acceptance of universal rules, equally applied, and hence they constitute "sacrifices of a corporate nature." As Gramsci suggests, however, these sacrifices don't eliminate hegemonic power; they modify it in ways useful to humanity, but at the same time they represent a form of intelligent maintenance. The Democratic Party should certainly be capable of that much (though its leaders seem, right now, barely capable of anything). But those of us who want more than this, who are worried about and opposed to the rule of a single hegemon, need external allies—first in the society of states and then in international civil society.

So consider again Gramsci's idea of an "equilibrium," whose international version might be an old-fashioned balance of power between the hegemonic state and some set of rival states. In the world today, however, given the actual imbalance of power, it makes more sense to imagine equilibrium in the form of a U.S.-European partnership. America needs a partner, or a number of partners, who can say yes and no, who can act together with us sometimes and independently at other times. But if such a partnership is to be established and sustained, European states must be prepared to take responsibility for the way things go in the world. They must take on some of the work that the hegemon does (for some of it, as I have already suggested, is necessary work). The more responsibility they accept, the more the hegemon must negotiate and compromise, the more the equilibrium will shift in the direction of equality. Had Europe—this seems to me an easy example—dealt forcefully and effectively with the crisis of the former Yugoslavia, without involving the United States, America would be significantly less hegemonic than it is in 2003.

Another kind of oppositionist politics might arise within international civil society. States are not the only actors in the world today. Multinational corporations, which play a major part in the global economy, are the central agencies of the decentered "Empire." They are an unlikely source of opposition to hegemonic power, though they might well set themselves against imperial recklessness. More important for my purposes here are the new and proliferating NGOs, nongovernmental organizations, which defend universal values or collective interests and play a still-to-be-defined part in global politics. Hardt and Negri deny the oppositionist potential of these organizations, citing the role that human rights NGOs played in Bosnia and Kosovo, where their "moral intervention [became] a frontline force of imperial intervention." But this seems radically wrong, given the moral necessity of

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the "imperial" intervention and the great difficulty of fitting it into any coherent theory of imperialism. Organizations such as Human Rights Watch or Amnesty International can intervene not only at the margins of empire, but also at its center—as they did in the case of the Soviet Union and its satellites. Today, they can address themselves to human rights within the United States itself.

But because the global market is the primary ground of American hegemony, we have to imagine NGOs that work through or against regulatory agencies such as the WTO and aim to constrain the power of capital—in exactly the way domestic social democracy did in the nineteenth and twentieth centuries. Seattle 1999 was the barest intimation of what that kind of political work might look like. We don't yet know whether international civil society will provide space and opportunity not only for human rights and environmentalist groups and other single issue organizations, but also for global movements with large redistributive ambitions. Here Hardt and Negri are more optimistic than I am, but this question—is a cross-border social democracy possible?—is surely the crucial question about the future of hegemonic power.

Meanwhile, though, when we look for a new equilibrium in the society of states or for new social movements in international civil society, we need to understand that we are not organizing a revolt of the imperial provinces. We need to construct a different kind of politics, adapted to the real power but also to the characteristic looseness of hegemonic rule. Writing in the Summer 2002 *World Policy Journal*, Martin Walker described this looseness under the rubric of "virtual empire." I don't much like the name, but his description is helpful. It fails, in fact, to anticipate the highhandedness of the Bush administration these last months, but it captures what I have called the "natural" mode of American hegemony. The virtual empire, he argues, maintains its preeminence "with more than a degree of courtesy for the rest of the international order." Allies are treated with the respect due to sovereign states. Former enemies (like Russia after 1989) are invited and helped to become new friends. The rulers of the virtual empire can be harsh in defending their interests but, at the same time, their policies are "open to argument and persuasion" from foreign states, and corporations, and interest groups of many different kinds. Virtual empire "is a new beast," Walker concludes, "the like of which the world has not seen before." Whatever we call the beast, we had better recognize its newness. The confident claim that we are in full intellectual control, that all we have to do is apply Lenin's theory of imperialism (which we all know by heart)—that is an invitation to political failure. ●

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Coalition of the Democracies

A New Foundation for the Transatlantic Alliance

Ralf Fuecks

The transatlantic conflict over the Iraq War marked a turning point in Europe's relationship to the United States. Whether one greets the rift between "Old Europe" and the global hyperpower as the birth of an emancipated Europe or deplores it as having endangered the basic coordinates of German and European policy, there is no returning to the status quo ante. The current strains in the transatlantic relationship reflect a deep-seated political and cultural estrangement between the societies on the two sides. By a decade's delay, the estrangement follows the political eruption of 1989-1990 that collapsed the old, bipolar world system and left the United States as the sole world power.

Up until September 11, 2001, it was far from certain how the United States would interpret her new role. George W. Bush began his presidency professing skepticism about the United States as global policeman and about the policy of "nation building" in crisis regions on the periphery of the world market. The attacks on the World Trade Center and the Pentagon altered this attitude immediately, and the fall 2002 policy statement on national security strategy codified the turnaround. Retreating to Fortress America is no longer an option. Instead, the doctrine of forward defense reigns—worldwide and with shifting alliances. It was not demagogic window dressing when Bush told a group of veterans at the White House, "America has no territorial ambitions. We don't want to become an empire." But one must add to that, "not an old-style empire anyway." The key concept for the strategists in the administration and the conservative think tanks is "national security"—with a very broadly defined concept of security. It encompasses security in the supply of raw materials—on which not just the American economy depends—as well as "war" against terrorist networks and an aggressive policy to prevent despotic regimes from gaining access to weapons of mass destruction. The United States has de facto bound itself to a policy of maintaining worldwide stability and order. With its realization of global responsibility comes the danger of hubris: failing to recognize that even the United States is taking on too much with this task. As it makes its interests into the standard of world order, it is mobilizing opposing forces that might be stronger than it is.

September 11 deepened the latent but already existing psychological discrepancy between the United States and Western Europe. In Western Europe, the shock over the attacks on New York and Washington was quickly supplanted by other concerns. It didn't upset our prevailing worldview, according to which we are, ever since the implosion of the Soviet Empire, "surrounded by friends," and the world we live in is ripe for a period of peaceful cooperation that might, at worst, be disturbed by anachronistic and localized outbreaks of violence. In the United States, on the other hand, September 11 spurred the perception that "the world out there," now as before, is a dangerous place, where violent conflict is endemic and can only be kept in check by superior military might: Hobbes rather than Kant. A repeat of the 9/11 attacks, only this time with weapons of mass destruction, is a vivid American nightmare. It appeared that first day and has been defining security policy thinking ever since.

In Europe, many people see all this as mere trumped-up fears, behind which is hidden the "real" driving force of America's show of strength. From the prominent news magazine *Spiegel* to European MTV, there is a consensus that "it's about one thing and one thing

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only: oil." It would be naïve to claim that this natural resource has nothing to do with the intervention in Iraq. But the connections are somewhat more complex than the slogan "No blood for oil" suggests. For one thing, Japanese and European dependence on oil imports from the Middle East is clearly greater than that of the United States. Second, it was the Russian and French oil industries that concluded lucrative contracts with Saddam Hussein's regime, a fact that presumably was not without influence on the attitudes of their governments and that also plays a role today as Russia and France seek to secure their influence on postwar Iraq through the Security Council. Finally, the days are long gone when individual nations, with the help of their militaries, ensure their exclusive grip on the raw materials and markets of other countries; imperialism has been superseded by globalization, which is based on the principle of open markets. Iraqi oil will not be monopolized by Exxon and Texaco, nor will it be reserved to feed the energy appetite of American air conditioners and sports utility vehicles.

To what extent, then, is it about oil? Preventing the oil states of the Persian Gulf from being taken over by anti-western movements that could turn oil into a weapon is at the core of the American security doctrine. At the same time, American policy makers are also concerned with the legitimate danger that income from oil exports will be used to develop weapons of mass destruction. The prospect that despotic, radical anti-Israeli regimes such as the Iraq of Saddam Hussein or the Iran of the fundamentalist mullahs would be equipped with medium-range missiles with nuclear or biological warheads should make others besides the United States uneasy. Although it is certainly true that the answer to this threat does not lie in a series of "disarmament" wars, it is urgent that Europe and the United States set in motion an effective arms control policy in the Middle East. Both sides should at least have learned this lesson from the diplomatic disaster of the Iraq War.

What Role for the UN?

One prerequisite for resuscitating the transatlantic alliance is therefore a serious dialogue about security, one in which both sides come to an understanding about trouble spots and potential threats in the coming decades and about an appropriate civil and military strategy to contain these risks. A second prerequisite is an effort to sort out the future role of the United Nations. Here too there is a need for compromise on both sides. It's obvious that France's and Russia's newfound love for the Security Council is motivated by power politics. They can thus upgrade their own global political status and rein in the United States. It is a somewhat different case with Germany. Here one believes much more than in Paris and Moscow in the "supremacy of law" and in the prospect of a supranational regime that, following the example of the European Union, increasingly constrains and replaces the sovereignty of nation-states.

In Germany, we have a tendency to idealize the role of the Security Council. It is not, in fact, an impartial advocate of international law and humanitarian interests but rather a body in which the self-interests of great and regional powers define the course of decision making. When it comes to conflicts of interest among states holding veto power, the Security Council is incapacitated. This was the case for long stretches of the Balkans War as well as during the Soviet war in Afghanistan; the Russian campaign in Chechnya—which defies all legal norms—is not even a topic for the Council because under international law, it is a "domestic situation within a sovereign state," and a state that in any case commands a veto. True as it is that there is no alternative to the Security Council as an organ of global crisis management, it is surely wrong to make it the sole source of legitimacy for military intervention. Was the intervention in Kosovo that put an end to large-scale "ethnic cleansing" contrary to international law because it took place without an explicit UN mandate? In the UN, all states count equally. In actual fact, however, their democratic legitimacy and devotion to the rule of law are extremely varied—and so is their readiness to oppose tyranny and massacre. Reliance on the UN does not therefore replace an autonomous political and legal determination of right and wrong, legitimate and illegitimate.

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It is crucial, nonetheless, to convince the United States to pursue its interests within the confines of the Security Council and not to pull back into a "selective" multilateralism (as in "the coalition of the willing"). But it won't work for the "Paris-Berlin-Moscow Axis" to attempt through the Security Council to tie the giant by its hands and feet. The consequence of any such containment strategy vis-à-vis the United States would be to paralyze the UN, not to mention the collateral damage it would inflict on the North Atlantic Treaty Organization and the EU itself. One of the central lessons of the Iraq War is that any attempt to transform Europe into America's geopolitical opposite number leads directly to the division of Europe. Great Britain will never be persuaded to pursue such a policy, and neither will the eastern- and central-European states, which are already suspicious of French-German-Russian hegemonic aspirations. Aside from that, they remember the dangers of totalitarianism far too well to succumb to the illusion that they can do without the transatlantic alliance. Anyone who wants to keep Europe together politically cannot advocate a strategic decoupling from the United States.

At the same time, the transatlantic alliance cannot be a relationship where Europeans are just followers. It doesn't help much, however, to demand an equal partnership if Europe does not carry a correspondingly equal political—although not necessarily military—weight. It already does so economically, and the EU, to the extent that it is united, is today given great weight in trade policy questions. Without similar progress in the field of foreign and security policy, the transatlantic alliance has no future. Europe must not only be in a position to ensure peace and security at home. It must turn its gaze more fixedly on the world—and not just on the world market. This means that the EU should not leave it to the United Statets alone to occupy itself with the conflict-laden themes of global politics: international terrorism, the proliferation of weapons of mass destruction, and the promotion of democratic regime-change in despotic states.

In the past, "democracy" and "stability" in the foreign policy of the United States as well as of the European states have proved again and again to be contradictory terms. It wasn't just the United States that supported authoritarian governments in the interest of putative stability. And indeed, there have always been two lines in American foreign policy: the conviction that ultimately the spread of pluralist democracy best corresponds to America's global interests and the *realpolitik* assessment of governments solely on the basis of their usefulness to the economic and military interests of the western hegemon. Now, for perhaps the first time, a transatlantic consensus is possible that global stability can best be achieved through the globalization of democracy. It is on this basis that a new transatlantic partnership might be built. ●

Ralf Fuecks is co-president of the Heinrich Boell Foundation, a German-based body for political education and international cooperation affiliated with the Green Party. An earlier version of this article appeared in German in the *Frankfurter Allgemeine Sonntagzeitung* of April 27, 2003.

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Two Cheers for the Blue Flag!

Assessing the United Nations

Ian Williams

Across the political spectrum in the United States, the United Nations excites strong feelings, but these are usually based on preconceptions and misconceptions rather than on an objective look at the strengths and weaknesses of the organization. No rational person who has observed the UN at work could ever suspect that it had either the ambition or the ability to dominate the United States, let alone rule the world. But that does not stop American conservatives from insisting that it is trying to do the former; nor does it stop liberals from complaining that it is not successfully doing the latter.

Some on the left denounced the Americans and British for attacking Iraq without a UN mandate, but many of those same people would have been as quick to denounce the organization as a cover for U.S. imperialism if it *had* actually voted to support the attack (as it did and they did during the 1991 Gulf War). It is perhaps typical that when representatives of the Iraqi Governing Council addressed the UN Security Council on 21 July, members of "Iraq Occupation Watch" disrupted proceedings from the public gallery, accusing the UN of "collusion" with the United States. Nuance is often lost on the edges of the political spectrum: in fact, one of the first decisions the Iraqis had taken was to come to the UN so as to bolster their legitimacy against continuing U.S. control.

At the other extreme, when the White House decided to give up on gaining Security Council support for an Iraqi invasion, the usual suspects hit the op-ed pages heralding the end of the organization. Certainly the epitaph from Richard Perle was somewhat premature. He announced in March that when Saddam Hussein went, he would "take the UN down with him." In fact, Perle and his colleagues had been saying similar things for a long time, with all the fervor of true believers predicting the rapture and the Second Coming. Saddam's projected fall was just another peg on which to hang his message of justified and untrammeled American supremacy.

It is a typically solipsistic American worldview that measures the UN's value by its usefulness to U.S. foreign policy. UN resolutions are something that the United States preaches about and enforces upon others (because they are often useful), but is not bound by itself (whenever they're not useful). There is one use both political parties have agreed on: the organization is a useful scapegoat for American policy setbacks. Bill Clinton, for example, blamed the UN for the "Black Hawk Down" incident in Somalia, even though that was an operation conducted without informing the UN forces, which, unthanked to this day, rescued the survivors. Even more cynical were the conservative attacks on the organization in the run-up to the Iraq War. Right-wing pundits criticized the UN for its failure to act during the Rwandan genocide, although it was actually Madeleine Albright who threatened to veto any resolution to send additional peacekeeping forces there. The ability to get away repeatedly with such canards follows from the lack of public attention to how U.S. representatives behave at the UN.

Still, most people on the center and left consider the UN and the growing body of international law to be, overall, a good thing. We think that war should only be a last resort, and that the international community acting in concert is vastly preferable to lawless military action. Indeed, some go further and regard even the last resort as unjustifiable: the UN is a *peacekeeping* organization. But that is a falsely idealistic conception of the UN. It is indeed,

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as some pacifists say, dedicated to peace, but it was set up to *fight* for peace if necessary. Similarly, some see the organization's main purpose as resisting the United States. This may be an occasional role thrust upon it by member states; it is no more the organization's purpose than enforcing American wishes. Of course, the best way to avoid disillusion is to avoid having illusions. Pragmatists, who believe with Henry Cabot Lodge that "This organization is created to prevent you from going to hell. It isn't created to take you to heaven," are probably the UN's soundest defenders. But that isn't a view that puts fire in the bellies of supporters.

UN Secretary General Kofi Annan has struggled, in tandem with Secretary of State Colin Powell, to keep links open between the White House and the rest of the world, the UN, and international institutions. It often looks like pandering, and in some measure it is. But placating a restless giant is a more sensible strategy than grandstanding. And, at least sometimes, the UN can be an impediment to unmitigated American supremacy. That is not to say that the United States does not use the organization for its own ends: it has done so repeatedly and successfully. However its use, and even its abuse, comes with conditions, which are not always welcome. Most member states agree with the American neoconservatives that one of the functions of the UN is to give the Lilliputians strings to restrain the global Gulliver. They think it is essential to keep the United States involved and entangled in the organization, even if it does occasionally lurch up and break the strings. This goes to the heart of the organization's normative role, which is often overlooked in the face of its enforcement failures. The State Department, and others in the Bush administration, certainly feel the need for external validation, as proven by their extraordinary efforts to mount a "coalition" for the Iraq War: the effect was intended to counter the lack of a UN mandate. But ad hoc lists of bullyable micro-states do not cut the mustard. The UN is the only body that can make a conquest legitimate.

In the three decades of Indonesian occupation of East Timor, often cited as an example of UN ineffectuality, Jakarta never got clear title to the territory. With the help of the United States, Indonesia averted Security Council action and even managed to produce a majority of abstentions in the General Assembly for any reaffirmation of condemnatory resolutions. But it could never sway enough votes to legalize its occupation, and that failure kept the dispute alive until it culminated in a UN protectorate and independence.

In the Western Sahara after a similar period, Morocco's occupation is still not recognized (some international oil exploration companies have pulled out as a consequence). And of course the world does not recognize Israeli occupation of the Golan Heights, West Bank, and Gaza, despite all the facts created on the ground. No matter how much Israeli governments try to exclude the UN and its inconvenient resolutions from the negotiations, they know that in the end, any settlement will need UN endorsement if it is to have legal authority.

In tandem with this normative role, however, the UN also mirrors the real world in which the United States is by far the most powerful state. If it did not reflect reality, it would be out of touch and hence unable to influence it. That also means, however, that it has little independent initiative in the face of American, or even lesser power, resistance. It is an instrument through which genuine coalitions of willing countries can be assembled, their legal doubts resolved; it can even ease them along to do "the right thing." It cannot *order* a member state to send in the marines, when the marines are necessary, but in most of the world, the fact that the UN asks can itself be a potent force in domestic politics.

To the frustration of neocon empire builders and American exceptionalists, instead of a Hobbesian domination of the strong over the weak, the UN provides a forum, a mechanism where the weak can (sometimes) influence outcomes. To invoke the UN's normative role, Washington has to persuade a majority of other states. Although it is true that threats and checkbook diplomacy have often played a role in securing majorities, in the end compromises are possible and indeed likely. The Lilliputians collectively can negotiate with Gulliver when

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bilaterally they would be stomped. Despite the frequent dismissive remarks of many Bush administration members, in the end the UN's normative role forced the White House to come back to the Security Council for a resolution about the Iraqi occupation. Bush simply had no option, at least so long as he is attempting his bold economic experiment of simultaneously running a war, cutting taxes, and dealing or, better, not dealing with a massive balance of payments and budget deficit.

Across the world, no one would buy Iraqi oil until the UN had authorized its sale and thus given clear title. Even American oil companies operate in a global environment, where the vast majority of customers' governments are ready to enforce international law, so the Pentagon had to bow to Powell's pragmatism or bear the entire cost of administering Iraq itself. The resulting resolution, number 1483, was a classic case of diplomatic doublespeak: without quite legitimizing the invasion, it regularized the result and opened up the possibility of deeper UN involvement. Then as the occupation began to take its toll, and as the number of war dead surpassed that of the 1991 Gulf War, the White House began to reconsider its earlier views and to expand the UN bridgehead. This was not a philosophical conversion but, again, a pragmatic accommodation to a reality in which the UN is more important than Pentagon strategists wish it were.

So the Pentagon has discovered that other governments are not prepared to send troops to stand guard over a hornet's nest while the United States pokes sticks in it. They want the legitimacy of a UN resolution and an assurance that their troops will not be dying as latter-day sepoys for an American occupation. The only surprising thing about the Indian refusal to send seventeen thousand troops was that Washington seemed surprised, which shows the need for frequent reality checks.

The Mixed Record

The different roles of the UN often blur into some form of multilateral indeterminacy that can cause confusion to friend and foe alike. It is a legislative organization, in that it creates international law and sets standards. It is executive, in that it carries out member states' decisions in the fields of economic development, humanitarian relief, and peacekeeping. In some ways, though, the UN is more important as a catalyst for global developments than as a legislative or executive body. The Conventions on the Law of the Sea, on Peaceful Uses of Outer Space, on Climate Change, on Disarmament, on Human Rights, and International Tribunals, are all major steps forward that would have been inconceivable outside the framework of the UN Charter. Too many of them, like the landmine treaty, the Kyoto Accords, and the International Criminal Court, have met with active opposition from the United States, but the rest of the world has gone ahead anyway.

When the UN takes executive action on its own, however, it is much less successful. Its record, in Bosnia or Rwanda, for example, has been close to disastrous, and even its heralded triumphs, such as Cambodia or East Timor, were far from unqualified successes. On the one hand, such failures can often be ascribed to the behavior of major member states, but, on the other hand, the occasions when UN officials have resisted such behavior or even pointed out its consequences are strictly limited.

Every UN office should have on its wall an icon of Romeo Dallaire, the Canadian peacekeeping commander left without supplies, reinforcements, or direction in Kigali at the height of the Rawandan killing. A truly honorable man, he suffered a nervous breakdown as a result. All too often, by contrast, those without honor are promoted.

From the very beginning, UN senior officials have been patronage appointments by the permanent five. This has not made the organization a puppet, but it has certainly made it less independent, and it has weakened the hand of the secretary general, who is at once office manager for the institution and also the custodian of the UN Charter. This latter role offers considerable potential as a bully pulpit. The secretary general can bring issues before the members and make recommendations, but in the end, as Bosnia proved, if no one is prepared to act forcefully, to send sufficient troops to defend safe havens, for example, there is little he can do about it. So the secretary general has

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moral authority, but has to be wary about using it, because ineffectiveness has a price. And the president or prime minister whom he condemns one day, he may have to rely on only a few days later. Annan has proven an adept tightrope walker. He phrases his criticisms finely enough to make points for the record while keeping his diplomatic powder dry.

Annan did much to keep the organization from falling totally in the mud during the last trying year, although it sometimes came close. And it is almost refreshing to note that the United States is not his only critic. While Annan and Powell maintained friendly relations, some of the Arab and non-aligned diplomats played for the gallery back home by attacking Annan for inaction. Indeed, at no time was the UN's ability to reflect the real world shown more clearly than in the final debates on the impending war when more than seventy diplomats rose to denounce it, and yet all refused to put their countries in the firing line by sponsoring a resolution and forcing a vote.

One often hears complaints that the UN is unrepresentative. Sadly it is all too representative of much of the world, as this incident suggested. There is, for example, a statistically significant number of human rights violators who get themselves on the Human Rights Committee. So while there was a frisson of leftist excitement last fall when the United States lost its position on the committee, a sense of perspective should remind us that many of the votes against American membership were cast by regimes that make John Ashcroft look like a spineless liberal. When we succumb to calls for a more representative UN, we should beware lest we get what we ask for.

Reform or Revolution?

Can the UN be "fixed"? Bearing in mind that it took World War II to fix the League of Nations, it is unlikely that any of us really wants World War III so as to reform the United Nations. One constant worry is the unrepresentative nature of the Security Council, particularly its permanent veto-bearing members. The United States, by far the most frequent wielder of the veto for the last three decades, was incensed because other countries dared even to threaten a veto during the Iraq debate. But Washington is not ready to abolish the veto. Just because Tony Blair has decided that some vetoes are unreasonable, the United Kingdom is no more likely to give up its prerogatives than other Security Council members.

The UN Charter allows permanent members to veto any changes in the Charter, and neither Britain nor France is rushing to give up this symbol of global status. But the international balance of power has shifted since 1945, and a decade ago the United Kingdom, bowing to the inevitable, suggested a committee to study the "enlargement"—not the "reform"—of the Security Council. The wise guys in Whitehall predicted the ensuing stalemate. The enlargements that make sense, they knew, are sure to encounter strong opposition. The present veto holders are all nuclear powers, which implies that Pakistan, India, Israel, and maybe even North Korea should now be rewarded with permanent seats, though no one has suggested this. Indeed, ethically, it would make more sense to reward South Africa, Brazil, and Argentina, countries that could have had nuclear weapons but chose not to. But global politics rarely pays tribute to virtue. Considering economic heft, and contributions to the organization, the two most logical candidates are Japan and Germany. Italy suggested an EU seat, replacing both Britain and France and preempting Germany, but the prospect of perpetual abstention from a hamstrung Brussels would not improve the effectiveness of the Council.

The rest of the world wants proportionality and is pushing for additional permanent members from the South or from each continent—and also more non-permanent representation. This is where the equation falls apart exactly the way, one suspects, the British planned. For Asia, should the new member be India, Pakistan, or Indonesia? For Africa, would Nigeria, South Africa, or Egypt take the crown? In Latin America, Brazil, or Argentina? If the members could agree on their candidates, that would leave ten permanent members and ten rotating. So how many members does it take to make the Council representative? And if we are aiming at representativeness, shouldn't we insist that any new members be democracies, responsible to their own people (even though

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it would be difficult to throw off China) and that they lose their seats in event of a coup?

The United States, correctly for once, warns that once a body such as the Council starts numbering above two dozen, it is a mass meeting, not an effective committee for action. The Economic and Social Council of the UN provides a nice example: it started off the same size as the Security Council and is now up to more than fifty members—and its work is, mostly deservedly, ignored. And if, as they want, the five new members have vetoes as well, the body would make the U.S. Senate look decisive. Indeed, the British envisage a second-class, permanent membership without a veto.

The real problem at the moment is less the *proportions* of representation than the *quality* of the representatives. Only the "West European and Other" group actually elects its nonpermanent member. The other regions pick their Security Council representatives on complicated Ptolemaic cyclical systems, which often propel weak and bendable countries into the chamber. Size in this case does not necessarily matter. In recent years, for example, Ireland and Jamaica had an honorable record in risking Washington's disapproval on issues of principle. However, when Rwanda's rulers were killing their own people, they had a seat on the Security Council, because it was their "turn" to sit there. And some small countries are as likely to vote against the United States as the Ukrainian delegate was to defy Moscow in the old Soviet days.

Increasing representation is likely to come at the expense of relevance. Keeping public scrutiny on what the existing delegates are doing would be far more effective than juggling with numbers. There is a strong and genuine argument for not trying to fix something that works, as the Security Council sometimes does. And it has in fact adapted its practices to reality even while the Charter remains unchanged. We can be sure, in any case, that any reform supported by the United States is unlikely to strengthen the UN's independence.

But in the end, the question comes down to what we want from the organization. Actually, what most liberals or socialists want is precisely what the UN achieves simply by being there—and this is what the right hates. By being a global organization, with a generally high public standing, the UN symbolizes the principle that there are indeed "meta-laws" above the brutish sovereignties of nation states and that a global society needs global means of mediation and regulation attuned to those laws. And so the UN needs, and deserves, as the old phrase has it, critical support. It is flawed, like the U.S. Congress. It makes no more sense for Nauru to have the same voting power as China than for Wyoming to weigh equally with California in the Senate. Security Council decisions are sometimes driven by bullying and financial lobbying, just like congressional legislation. But abolition of either the UN or the U.S. Congress would be a drastic step. The issue is, how effectively can the UN be used to win desirable ends? And the answer to that is very much in the hands of the American public. From Kyoto to landmines and the ICC, an uninformed and silent public has let a deeply ideological minority hijack its voice in international councils, in contrast to most other democracies where multilateralism has strong political support among politicians and public alike. The UN can indeed be boring, exasperating, foolish, wrongheaded. But it is important, and it has been neglected for too long by the American left. ●

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Sandbags Full of Money

Victim Compensation After 9/11

John G. Culhane

The fallout from the horrific events of September 11, 2001, continues to be in dramatic and pervasive evidence. Although the search for weapons of mass destruction in Iraq has lately received obsessive attention, the purported presence of such weapons was just one of a kaleidoscope of reasons used to justify the war. Earlier, a supposed connection between the Iraqi leadership and al-Qaeda (or, sometimes, "al-Qaeda 'type'") terrorists was the justification that shifted most often into view. Domestically, September 11 has sparked debate about the permissible extent of civil rights abridgements in times of national peril. This past summer, the discussion was refueled by allegations of abuses under the Patriot Act.

These long-legged stories made it easy to miss this item: in late January, surviving family members of Cantor Fitzgerald employees who were killed on September 11 brought a lawsuit against Kenneth Feinberg, the special master charged with administering the government's 9/11 compensation program, known as the Victim Compensation Fund (VCF). The suit charges that by declining to provide the plaintiffs with full financial compensation for their loss, Feinberg is misreading the VCF and thereby defying the will of Congress. He is alleged to be "playing a cat and mouse" game with wage earners at the highest income levels—in particular, the well-paid bond traders who worked at Cantor Fitzgerald. Two similar lawsuits followed. In late May, the federal trial judge dismissed all of the suits, but at least one plaintiff has filed a notice of appeal.

Whatever the legal merits of their case, the plaintiffs' frustration is understandable. Feinberg has publicly stated that, although there is no cap on awards under the VCF, payouts of more than six million dollars will be rare. Payments to date bear this out. By mid-July, of all awards to survivors of those killed on September 11, the highest was just over that amount. But unlimited payments to those at the peak of the economic pyramid would total twenty million dollars or more in some cases. Feinberg counters that Congress vested him with enormous discretion in making payment decisions, and that he is striving for a more democratic apportionment of the taxpayer money that funds this compensation initiative. On occasion, he has been explicit about his philosophy. At a June conference of law professors in New York, he had this to say when asked how he would change the Fund: "Give everyone the same."

In his frequent public appearances explaining and defending the VCF, Feinberg has emerged as a reflective advocate; one who understands the fairness issues that creating such a generous compensation scheme raises. More than once, he has mentioned the valid criticisms leveled at the Fund by other victims of misfortune. To begin with an obvious example, the victims of other terrorist attacks, for whom there is no similar compensation system, can only look on with bitterness. Kathleen Treanor lost her young daughter and her in-laws in the 1995 Oklahoma City bombing, and has become an unofficial spokeswoman for survivors seeking government compensation for the surviving family members. Despite the boost her effort received from the enactment of the VCF, its best chance for legislative success may have passed last year. Pleas on behalf of those injured or killed in the bombing of the Kenyan embassy in 1998 have similarly stalled.

The possible unfairness of the VCF has only recently become a proper topic of con-

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versation. When the Fund was created, as part of the Air Transportation Safety and System Stabilization Act, few critics could be heard. The law zipped through Congress within less than two weeks of September 11 and was primarily designed to bail out the airlines. The government's goody bag delivered fifteen billion dollars in cash payments and federal loans to the carriers, as well as a significant limitation on airline liability: exposure was capped at the amount of insurance the carriers held on the four aircraft downed in the attacks, a total somewhere around six billion dollars. Having narrowed the avenues of legal redress, Congress understandably felt some obligation to put something in their place. Besides, no amount of compensation would have seemed sufficient at the time.

With the benefit of some distance from the event, critics have begun, sometimes apologetically, to question whether our unequal treatment of victims of terrorism can be justified. Sometimes the issue is cast even more broadly: When and why do we, or do we not, compensate those affected by tragedy? Why are those who lose homes and family through flood and fire not entitled to substantial compensation from the government? What about those who suffer from disease or illness? The serious work of discussing these disparities remains to be done. I want to start that conversation here.

Circles of Unfairness

As a first principle, if government is going to get involved in the business of compensation at all, it should treat similar cases alike. But identifying similar cases is difficult. Visualization of the problem might be helpful. Using September 11 as a starting point, think of victims of misfortune as held within concentric circles, radiating out from a common center to increasingly large diameters, with similarly situated—but unequally treated—pairs of cases within each circle. Imagine, also, that the circles become less distinct as they become larger, much as clarity is lost as photos are progressively blown up. This exercise can provide a useful vehicle for moving from the specific incident to general policy, and a way of thinking about choices we now make uncritically and inconsistently.

The decision to compensate some survivors, but not others, for the tragedy of September 11 itself would lie within the first, innermost circle. In the days that followed the establishment of the VCF, the dominant focus was on these issues. The VCF looks to state law in determining who is entitled to recover; the personal representative of the estate files the claim on behalf of the estate. As a practical matter, this usually means that a surviving spouse is the victim's personal representative, and principal claimant, whether or not the deceased had a will.

On the other hand, unmarried intimates (both same sex and opposite sex) of those killed on September 11 are eligible for recovery only if named in a will; otherwise, the legal next of kin will be the personal representative, and the "virtual spouse" may get nothing. Further, even if a will names the surviving unmarried partner as sole beneficiary, he or she will not be eligible for the presumed hundred thousand dollars in non-economic loss that goes to spouses and dependents.

These distinctions are not unique to the VCF; the law consistently treats married people differently from unmarried. And the VCF is in fact more victim-friendly than the tort-law rules, under which any potential beneficiaries would otherwise have to proceed. In most states, only those who stood in certain enumerated relationships to the deceased have standing to sue for "wrongful death." In New York, to cite the most relevant example, spouses of decedents qualify for recovery (as do children and parents), but those named in a will—even as sole beneficiary—do not, unless they stand in one of the specified relationships to the decedent. Thus, the VCF actually allows recovery to those who would otherwise be denied it, even if the treatment of unmarried couples remains unequal to that of their married counterparts.

Another disparity within this innermost circle involves differences in treatment of different *kinds* of injuries incurred by surviving victims: The VCF pays only for harm caused by direct physical impact at any of the disaster sites—the World Trade Center, the Pentagon, the crash site in Pennsylvania—within twelve (or, in the case of rescue workers,

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ninety-six) hours after the crashes. The injured party must also have sought medical attention or stayed overnight at a hospital. So a tourist who was injured by a piece of crumbling stone might be eligible for compensation, while a rescue worker who showed up to help more than four days after the World Trade towers were struck would have no claim—whether for serious long-term health effects of breathing the toxic air or for falling into a hole at the site of the former buildings. Multiplying the apparent unfairness of this difference, the rescue worker might also be less likely than the tourist to recover in tort, because respiratory illness or other long-term effects are not likely to manifest themselves for years—by which time the insurance liability limits built into the Act will probably have been reached. This inequity could be addressed by further legislation, but that seems unlikely.

The next wider circle was introduced earlier: the more generally unequal treatment of victims of different terrorist attacks. Those killed or injured by the attacks in Oklahoma City or Nairobi challenge the inconsistency in their treatment, compared to that of the September 11 victims. One possible distinction has already been mentioned: survivors of September 11 have reduced recourse to tort law, and such limitation—at least as to the airline industry—was (arguably) necessary to the national interest. But this distinction is probably more apparent than real. Tort claims in all terror cases have high hurdles to clear, including the difficulty of proving that someone (besides the terrorists) should be liable for negligence. Except for those suing on behalf of the passengers of the doomed flights, the plaintiffs will have to convince a court that the defendants should have anticipated something like the attack on the WTC, and that they could have done something to prevent it. In terms of real outcome, then, the survivors of September 11 are simply in the "better" position—not least because of private charitable contributions, the value of which the VCF doesn't count against any recovery otherwise available. Although the charity doesn't come from the government, its greater availability to the survivors of September 11 highlights the disparity.

Although the death of Kathleen Treanor's in-laws forced her to liquidate all her assets to save her home, victims of September 11 have routinely met with acts of charity that seek to ensure that their lives will not be further disrupted. Jeffrey O'Hara, a partner in the Roseland, New Jersey, firm of Connell Foley, is just one of thousands of Good Samaritans to those affected by September 11. O'Hara has been working through several charitable agencies—including the Children's Fund, the Children's Aid Society of New York City, the World Trade Center Miracle Foundation, and the Twin Towers Orphan Fund—to fund private high school education for kids whose surviving parents would otherwise not have been able to afford it, post–September 11. O'Hara's position is simple and seemingly hard to dispute: "Whatever life opportunities existed before the planes hit, we as a community have an obligation to provide afterwards." Do we, though? If so, why was there not a similar obligation to the victims of these other terrorist attacks—or, for that matter, to those killed or sickened by the anthrax bio-attack that followed the events of September 11?

The widest circle is the least distinct, but the most troubling. It may in the end be the one that spurs a national dialogue on how we decide who gets a "helping hand" from the government. This circle includes those injured by terrorist attacks and by other disasters—hurricanes, fires, and floods, for example—and invites us to ask, first, whether compensation in all cases of human suffering should become routine, rather than episodic, as is now the case. Under the Disaster Relief and Emergency Act, federal assistance in various forms—including housing assistance and cash grants—is available to those affected by natural disasters, but only if the governor of the affected state requests, and the president approves, a declaration of disaster. Should eligibility for compensation in disaster cases become routine, or should we move in the other direction and refuse to compensate those affected by natural disasters—and terrorism, for that matter—in all cases? Is there a justification for maintaining the somewhat ad hoc status quo? While we are on the subject of governmental largesse, is there any way to avoid discussing other personal misfortunes, such as catastrophic illness?

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Recognizing Social Risks

The only fair and consistent approach to compensating victims of personal misfortune is plain, but unlikely to be implemented: government should pay all of the victims within the widening circles drawn above, but only to the extent of providing a basic safety net. The VCF's unusually generous payout, which replicates the tort system in fundamental ways, was a mistake that should not be repeated. The risk of terrorism is a social, or shared, risk for which everyone should have to pay. The rhetoric that followed September 11 recognized as much: "We" were attacked. But "we" are also attacked by natural disasters, illness, and disease.

As a nation, we sometimes have trouble recognizing social risks, even when they most clearly affect everyone. The clearest example of such a risk is communicable disease, where the health of the individual and that of the population at large are inextricably linked. Vaccinating children against illnesses that once ran unchecked through the population has been one of the most successful public health initiatives of the twentieth century. Polio, measles, mumps, rubella, and whooping cough, to name a few, have almost disappeared. As the specter of fatal and crippling disease receded, a small, vocal group of parents began to resist the inoculation of their children, in part because some of the vaccines themselves cause a tiny but predictable percentage of those inoculated to become infected with the very disease being protected against. From an understandably selfish perspective, these objections make sense: Because the disease has mostly been wiped out, parents ask, Why should my child bear *any* risk of infection? Complicating the picture is the possibility that vaccinations may, very rarely, cause serious and potentially fatal side effects, such as anaphylactic shock and acute and chronic encephalopathy.

But this risk of adverse individual outcomes pales next to the social risk of doing away with vaccinations altogether. Reminders appear whenever vaccination rates drop. Outbreaks of measles throughout the 1990s have directly followed decreases in the percentage of inoculated children. In India, polio has been pushed from the edge of eradication and is now resurgent in population pockets where distrust of government has led many to refuse to let their children take the painless oral vaccine. The best response to this conflict between the individual and the state would be for government to require universal vaccinations and then to compensate those injured.

In fact, policy has been less tidy, reflecting an incomplete appreciation of the risk of disease outbreaks. First, in most states parents can exempt their children from vaccinations for religious or "philosophical" reasons. Second, the federal Vaccine Injury Compensation Act does compensate those injured, but does so clumsily. The Act was forged by an uneasy coalition of parents with injured children and the pharmaceutical industry. Parents believed that their chances would be better under the Act than by suing the drug companies in tort law, where problems with establishing the causal connection between the vaccine and the injury usually meant defeat. The industry worried about unaffordable liability exposure, if even in a tiny number of cases, and threatened to bolt from the vaccine market had protective legislation not been drafted. Under the Act, the government has created a fund to make payouts to injured children or to the parents of children who have died, according to a table of vaccine-related injuries—if the injury is on that table, the vaccination is presumed to have caused it; if not, the contrary presumption applies. Resort to the tort system is permitted only after proceedings under the Act have resulted in an outcome the parent or guardian finds unsatisfactory. The Act is funded by a surcharge on the cost of vaccines.

Here, the public health imperative spurred governmental involvement that might otherwise not have happened. But the Act isn't fully consistent with a social risk model; the surcharge is paid only by those who purchase vaccines—parents, insurers, or, if no other funding source is available, the government itself. The better approach would be for government to pay the surcharge directly in all cases, thereby passing a negligible cost on to taxpayers. Doing so would reflect recognition that vaccine-related injuries are the social price we *all* pay for immunizing the population against once dangerous illnesses.

Death and injury from terrorism are social

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risks, too. There is no justification for compensating the victims of September 11 while ignoring those affected by the bombings in Nairobi, Dar es Salaam, and Oklahoma City. And we shouldn't stop there. New York Senator Charles Schumer was right to propose that the family of a teenager killed in 1994 when a Lebanese native opened fire on a van carrying Hasidic Jews should also be eligible for compensation. When terrorism is the trigger, the number of victims should be as irrelevant as whether the terrorist was acting alone or as part of a larger group. Compensation should be the rule, not the unfair exception. As the above example suggests, a statute compensating victims of terrorism generally would require a definition of terrorism to deal with the difficult cases. One candidate for such a definition would be "acts of violence committed by groups, or individuals found to represent such groups, in order to force a government into granting demands, or taking certain action." Given the unclear motivation of many acts of fundamentalist terrorists (what, exactly, did the September 11 terrorists hope to gain?), the definition would have to be interpreted broadly.

But how *much* should we pay for those injured or killed by the realization of social risk? The federal approach to natural disaster relief may provide the answer. Once a "major disaster" has been declared, federal assistance in the form of housing assistance and cash grants is payable only for those needs that can't be met through other sources, including private insurance. Victims may also be required to seek a loan before qualifying for outright grants. Where outright grants are awarded, the payouts are modest; as the government states on its Web site, "the average grant tends to be in the $2,000 to $4,000 range." This safety net seems especially threadbare by comparison to the VCF, but the contrast highlights the unfairness of the VCF itself, not of the disaster relief program. And the tort-like payments under the VCF also stand in glaring contrast to our national failure to ensure that basic health needs of all citizens are met. To put the matter unpleasantly: the family of a wealthy bond trader killed on September 11 stands to receive millions in tax-free, taxpayer-funded relief, while a low-wage earner stricken by cancer may have to go without life-saving treatment and without the wages needed to sustain his or her family.

The events of September 11 have the potential to expand our definition of social risk. The immunization case is easy, because the health of one is the health of all. If non-contagious illnesses were seen as having similarly broad consequences, the debate over guaranteed health care would long ago have ended in favor of providing it. September 11 delivered a unifying shock that could vibrate into other cases of suffering. Although the effects of terrorism are now broadly felt, far more of us—virtually everyone past childhood—could recite a direct connection with someone stricken with a debilitating or fatal illness or disease. Even for those with the financial resources to deal with such tragedy, the emotional and practical toll of these misfortunes is often overwhelming. Perhaps all that's needed is the imagination to picture ourselves or those we care about forced to bear such misfortune without financial resources. If we can do so, we will have defined illness as a social risk that we all share, and that we should all be made responsible for.

Safety Nets, Incentives, and the Displacement of Tort Law

Once social risks are defined with appropriate breadth, the VCF's misguided approach emerges even more clearly. Government can't restore everything taken by all tragedies. The federal approach to compensation for natural disasters, perhaps coupled with insurance regulation, provides the best model: pay those most in need, but only to the extent necessary to assist them in obtaining the necessities. The statute creating the VCF was at least half-right in counting private insurance and certain sources of government funding, such as state-paid death benefits, against recovery—it should also have explicitly factored in charitable contributions in calculating the amount dispersed. Terrorist attacks might cause an overdue expansion of our idea of what counts as necessary. Depending on the nature of the tragedy, payment might go beyond food and basic housing and take in such categories as relocation expenses, job training (for those too seriously injured to continue in a former occupation), and ongoing medical treatment. But compensation for attacks by terrorists should not attempt to repli-

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cate full private insurance, much less possible tort recovery, and not just because of the staggering cost to the treasury of doing so.

Private insurance coverage and tort law compensation both mirror distributional inequalities. Rich people carry more insurance than poor ones—not only because they can afford to, but, more to the point, because they have more to insure. They also recover more in personal injury actions, because they suffer greater economic loss. So when the government sets out to cover all of the very real economic losses incurred by a horror such as the attacks on September 11, it perpetuates the distributional inequalities among its citizens, and inappropriately tries to replicate the tort system's goal of achieving corrective justice between two parties to a private dispute, where one has wronged the other.

Looking at the possible insurance incentives of September 11-style payouts emphasizes the inequality point. When government compensation provides only the necessities, there's little danger that those with assets to insure won't do so, even if private insurance counts against recovery. Too much would be lost by forgoing such insurance. But if those affected by terrorism—or, in principle, by any social risk—are compensated to the full extent of their economic loss, why would they continue to obtain private insurance, especially when government compensation is reduced by the amount of insurance recovery? Taxpayers would end up paying insurance premiums for even the very rich, thereby feeding and fattening existing inequities. September 11 could come to stand for the beginning of a new, retrogressive tax. The basal unfairness of such a compensation scheme becomes even more apparent in light of the recent $350 billion tax giveaway (likely to amount to three times that much), mostly to our richest citizens.

Instead of limiting the right to sue and creating, in its stead, a Frankensteinian compensation system, Congress would have done better with a different kind of one-two punch. First, allow basic disaster relief for those truly in need. Given the roaring rivers of private money that flowed after September 11, such an initiative would have cost the treasury little. Then, indemnify the airlines (but probably not other defendants) for any tort damages they might have to pay, but only to the extent absolutely necessary to the national interest. And it's not clear that our interest lies in preventing airline bankruptcy. After all, the massive bailout engendered by the Act hasn't prevented major domestic carriers from seeking bankruptcy protection, and domestic air travel hasn't stopped. Another handout to the industry of nearly three billion dollars was enacted in late April of this year, but might be similarly ineffective. Restructuring or increased regulation of the industry might be overdue. Congress instead propped up the industry by forcing a messy collision of tort and taxpayer-funded compensation, thereby putting government in the position of perpetuating inequality.

The VCF is not as bad as it could have been. In both its provisions and its interpretation by the special master, it reflects some ambivalence about the propriety of government's doing the job of tort law, which is to restore an imbalance that has been created between a wrongful actor (the defendant) and an injured party (the plaintiff). Tort law is indifferent to the financial circumstances of the parties before the injury, in the sense that a poor defendant must pay a successful rich plaintiff, even though doing so increases the wealth disparity between them. But government should be sensitive to the distributional effects of any payments that come from the public treasury. (Indeed, the Fund is a "fund" in name only, because its payments do not come from a dedicated source, but from general revenues.) And the VCF does hedge its commitment to full tort recovery. As stated earlier, it counts private insurance against recovery. So those who can afford more insurance should receive less from the Fund. In fact, such reductions do seem to be occurring.

The Department of Justice's Web site provides information on compensation awards that have been paid out, and presumed award amounts for applications still in process. The recovery tables provide incomplete evidence, because no information is given about any particular claimant, including whether the deceased had a spouse or dependents. (A separate list provides a few examples, edited to preserve anonymity, of actual cases.) Nonetheless,

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the amounts paid out are instructive. These awards, grouped in annual income brackets of $20,000, reveal wide disparities. One person in the $100,001-$120,000 range had a "net presumed award amount" of only $250,000—the minimum, given the presumed $250,000 for non-economic loss per victim. This victim had neither a spouse nor dependents, or else an additional $100,000 in noneconomic loss for each additional person would have been paid out. But the victim received *nothing* for economic loss, probably because insurance took care of the economic loss that the Fund would otherwise have paid. On the other hand, one victim in the $40,001-$60,000 range received $2,057,068. This recovery, in turn, was substantially equivalent to, or greater than, that of several of the claimants in the "over $220,001" category. It thus seems that the insurance offset is substantially mitigating the income-based disparities in awards that would otherwise exist. But those disparities can't be entirely eliminated. The biggest awards have indeed gone to the wealthiest claimants. As of late July, the nine largest awards had all been made to those earning at least $200,000 annually, with seven of those going to those going to those in the "over $220,000" category.

Feinberg's own interpretation of the statute, and his powers under it, impose another substantial obstacle to "virtual tort" recovery—except in the unlikely event that the lawsuit against him changes matters. Feinberg's method of calculating compensation has resulted in tables that provide an estimate of what survivors can expect to recover, based on such facts as the victim's age, income, and number of dependents. What is surprising about the tables, though, is that they provide no such estimates where the recovery could be expected to be the greatest—young victims with high salaries. The recovery tables already discussed similarly stop at "over $220,001." It's clear that Feinberg hasn't been following a pure economic loss calculation for those on the top shelf. In a statement and preamble to the final rule, he had this to say about those victims who had resided in the top 2 percent of income earners: "[C]ompensation above that level would rarely be necessary to ensure that the financial needs of a claimant are met."

The statement is cryptic, probably deliberately. What does Feinberg mean by claimant's "financial needs"? Enough to replicate their pre–September 11 lifestyle? It can't mean that, or there would be no limits. Enough for the basic necessities? It obviously can't mean that, either, because no one, including Feinberg, thinks this statute is just for emergency, base-level compensation. So it must mean an unspecified something in-between. This lack of clarity is one basis for the "cat and mouse game" allegation. But, as Judge Hellerstein noted in his opinion dismissing the suits, the statute does give Feinberg unusually broad discretion, allowing him to consider "the individual circumstances of the claimant." And the impulse that activates his approach is commendable and apparently close to universal; in one CNN poll, 86 percent of respondents shared Feinberg's view that all victims of September 11 should receive equal compensation.

Deflecting Responsibility for Error?

There may be another explanation for the VCF, which is cynical only if untrue. Perhaps the government was attempting to deflect attention from its own negligence in failing to respond more seriously to the threat of terrorism. The embarrassing and serious intelligence failures that have recently come to light are only the best-known examples of such carelessness. To those might be added the willingness to leave airport security to airlines (which responded by hiring low-wage workers from private agencies) and the failure to take effective steps to protect the World Trade towers after the bombing of their underground garages in 1993. More damaging facts might surface during litigation against the United States itself (although any such cases would face difficult governmental immunity issues), or even in the course of pretrial discovery in cases against other defendants. The VCF will reduce the number of suits, and therefore the potential for damaging disclosures—not to mention the government's own liability.

These motivations for creating the Fund may be real, but should not be overstated. First, the government is likely to succeed in invoking national security arguments to prevent the publication of at least some sensitive informa-

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tion. And government would not likely be held accountable for its own negligence, even if proven. Although the Federal Tort Claims Act (FTCA) waives the sovereign immunity that the United States otherwise enjoys in suits by its citizens, it has an important exception for so-called discretionary functions. The government could argue that it made decisions about how to respond to the threat of terrorism that are beyond the jurisdiction of courts to second-guess. This position may not offer complete protection—it's hard to see the failure of different agencies to communicate with one another as discretionary—but furnishes a sturdy enough shield that the government probably would have had little to worry about by leaving those killed and injured on September 11 to their common-law remedies.

Nonetheless, our representatives probably felt *some* responsibility for the events of September 11, however indistinctly. If so, the better response would have been to work with private charity and to pay victims only for basic needs. This was not a case like the 1976 collapse of the Teton Dam in Idaho, which resulted in the loss of eleven lives and the homelessness of several thousand. There, the negligence of the Bureau of Reclamation in building a dam on fractured volcanic material was clear, and the federal government paid out some two hundred million dollars in compensation. But where the primary fault lies elsewhere, government should not replicate the tort system, even to the imperfect extent of the VCF.

A Better Approach

The VCF ends up undercutting the very rationale that drove its enactment—the events of September 11 were an attack not on any one American, but on all. Those fortunate enough to enjoy prosperity should bear the sacrifice in proportion to their wealth, and, hard as it might be, see that sacrifice as fair. The alternative, unique to the VCF, is that taxpayers, including those of modest means, end up subsidizing the rich. This distributional choice should be rejected, and, according to the CNN poll mentioned earlier, it has been. With some reflection, many of those who supported equal payments to the victims of September 11 payouts might vote to extend this equality principle beyond that event, and even beyond terrorism. The disaster-relief approach is preferable. It should be expanded to achieve greater consistency among *all* of the circles of cases discussed earlier.

With the benefit of time for reflection, it has become clear that there is something just plain wrong about lavishing recovery on some while others go with inadequate compensation or none at all. When the VCF was created, of course, there was no such critical distance from the horror of the event. But—incredibly—it's now two years since that horrible day, and our collective mental health has depended on our ability to gain some distance from the confusion, sorrow, and desperation that followed the events of September 11.

At that moment, the need to do something was strongly felt, and it's possible to be overly critical of Congressional action *in extremis*. A friend's chilling metaphor has stayed with me: We piled sandbags full of money at the borders. We didn't know what else to do. Because of our unassuageable grief, the victims of September 11 will likely continue to be better cared for by the private sector than victims of other tragedies. Private relief doesn't distribute its bounty equally. The child rescued from the well will always capture the popular imagination more than the seamstress inhaling toxic fumes all day. But government should not be multiplying the inequalities that private charity creates; rather, it should be working to reduce them.

Unfortunately, when it comes to the VCF, what is done can't be undone; it's too late to substantially amend the Act, in part because it is already paying out. But it would be a great mistake to duplicate the error. Victims of other disasters—including medical misfortune, if we want to be consistent—should receive the government's helping hand, if they need it. But let's not continue to confuse the tort system and the inspiriting charitable impulses that infuse both private and public compensation initiatives. ●

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Off the Rolls

The Ground-Level Results of Welfare Reform

Sharon Hays

It's HARD TO DATE it precisely, but I think my severe case of cognitive dissonance set in on a summer evening in 1999. As part of my research on welfare reform, I'd spent the afternoon playing on the floor with Sammy, the four-year-old son of a welfare recipient. I was struck by his intelligence and creativity and imagined that if his mom were middle-class, she'd soon be having him tested and charting the gifted and talented programs he'd attend.

But Sammy's mom, Celia, had other things on her mind. Cradling her infant daughter, she told me that she had been recently diagnosed with cancer. Her doctor wanted her to start treatments immediately. Although she'd been working at a local Fotomart for three months, the welfare office still helped her with the costs of child care—costs she couldn't otherwise manage on her $6 per hour pay. When she asked her boss about flexible hours to manage the cancer treatments, he told her she was just too easily replaced. She'd also checked with her welfare caseworkers; they told her that if she lost her job she'd have to quickly find another or risk being cut off the welfare rolls. I talked to her about the Social Security Disability program, even though I knew that she had only a slim chance of getting help there. Celia had an eighth-grade education, no financial assets, few job skills, and no extended family members with sufficient resources to see her through. And she needed those cancer treatments now.

Under the old welfare system, she could have simply returned to full welfare benefits. Yet, knowing what I did from my research into the worlds of low-wage work, welfare, and disability, I was sure there was now virtually nowhere for her to turn, save all those local charities that were already incredibly overburdened. I didn't have the heart to tell her.

When I went home that night, the local television news was interviewing a smiling former welfare mother recently employed at a supermarket chain. It was a story of redemption—the triumph of individual willpower and American know-how—and the newscaster cheerfully pronounced it a marker of the "success" of welfare reform. That's when the dissonance set in. I've been suffering from it ever since.

From one point of view, it makes perfect sense that so many have celebrated the results of the 1996 Personal Responsibility Act. The welfare rolls have been cut by more than half—from twelve million recipients in 1996 to five million today. Among those who have left welfare, the majority (60 percent to 65 percent) are employed. Add to this the fact that public opinion polls show that almost no one liked the old system of welfare and most people (including most welfare recipients) agree that the principles behind reform—independence, self-sufficiency, strong families, a concern for the common good—are worthy ideals.

The problem is that there is a wide gap between the more worthy goals behind reform and the ground-level realities I found in the welfare office. There is also a tremendous amount of diversity hidden in those large-scale statistical accountings of the results of reform—and much of it is a great deal more disheartening than it first appears. After three years of ethnographic research inside two (distant and distinct) welfare offices, after interviewing more than 50 caseworkers and about 130 welfare mothers, and after five years of poring over policy reports on reform, it is clear to me that the majority of the nation's most desperately poor citizens are in worse shape now than they would have been had the Personal Responsibility Act never been passed.

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Between Success and Failure

Political speeches, policy reports, and the popular media all cite the declining rolls and the employment of former recipients as the central evidence of the success of welfare reform. By these standards, Celia and her children would count as a success.

Of course there are genuine success stories. Take Sally. With a good job at the phone company, medical benefits, sick leave and vacation leave, a nine-to-five schedule, possibilities for advancement, and enough income to place her and her two kids above the poverty line, she was better off than she'd ever been on welfare benefits or in any of the (many) low-wage, no-benefit jobs she'd had in the past. And there was no question that the supportive services that came with reform had helped her to achieve that success. She got her job through a welfare-sponsored training program offered by the phone company. Welfare caseworkers had helped her out with clothing for work, bus vouchers, and a child care subsidy that got her through the training. "I think welfare's better now," she told me. "They've got programs there to help you. They're actually giving you an opportunity. I'm working and I feel like I can make it on my own."

Monique was also helped by reform. A messy divorce with an abusive (and stalker) husband had cost her her job as a nursing assistant. With two young sons to worry about, she sought help from the welfare office. Fortunately, she lived in one of the few states with a welfare policy that exempted domestic-violence victims from the immediate demand to find work. Using special funds made available by reform, welfare caseworkers not only provided her with a welfare check, but also helped her to manage car repairs and the down payment on an apartment. Once she and her children were settled, her boss planned to hire her again. If Monique could remain hidden from her ex-husband, things would work out just fine. Like Sally, she was grateful for the help she'd received from the welfare office.

About one-half of the welfare mothers I met experienced at least temporary successes like these. Yet under the terms of reform, the long-term outlook for the majority is not so positive. And in many cases it is difficult to distinguish the successes from the failures.

Proponents of reform would mark Andrea, for instance, as "successful." When I met her, she was earning $5.75 an hour, working thirty-five hours a week at a Sunbelt City convenience store. After paying rent, utility bills, and food costs for her family of three, she was left with $50 a month to cover the costs of child care, transportation, clothing, medical bills, laundry, school costs, furniture, appliances, and cleaning supplies. Just four months off the welfare rolls, Andrea was already in trouble. Her phone had been turned off the month before, and she was unsure how she'd pay this month's rent. Her oldest daughter was asking for new school clothes, her youngest had a birthday coming soon, and Andrea couldn't take her mind off the upcoming winter utility bills. If she were single, she told me, she would manage somehow. But with children to worry about, she knew she couldn't make it much longer.

National-level accountings of reform would also place Teresa and her three children in the plus column. When I met her, she had a temporary (three-month) job at a collection agency. Thanks to public housing and the time-limited child care subsidy offered by the welfare office, she was making ends meet. Teresa was smart and capable, but had only a high school diploma and almost no work experience. She'd spent most of her adult life outside the mainstream economy—first married to a drug dealer, then working as a street-level prostitute, and finally, drug free, on welfare. As much as Teresa thought she was doing better than ever and spoke of how happy she was to be getting dressed up every morning and going out to work, she was still concerned about the future. The child care costs for her three kids would amount to nearly three-quarters of her paycheck if she had to cover them herself. And her job, like that child care subsidy, was only temporary. Given her résumé, I wondered just what career ladder she might find to offer her sufficient income and stability to stay off the welfare rolls and successfully juggle her duties as both primary caregiver and sole breadwinner for those three kids.

The cycle of work and welfare implied by these cases is the most common pattern among the welfare-level poor. It is a cycle of moving

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from welfare to low-wage jobs to mounting debts and problems with child care, husbands, boyfriends, employers, landlords, overdue utility bills, broken-down cars, inadequate public transportation, unstable living arrangements, job layoffs, sick children, disabled parents, and the innumerable everyday contingencies of low-income life—any and all of which can lead a poor family back to the welfare office to repeat the cycle again. Most of the people caught up in this cycle face a number of social disadvantages from the start. Welfare recipients are overwhelmingly mothers (90 percent), they are disproportionately non-white (38 percent are black, 25 percent Latino, and 30 percent white), nearly half are without high-school diplomas (47 percent), the majority have experience in only unskilled jobs, about half suffer from physical or mental health disabilities, almost as many have a history of domestic violence, and all have children to care for. At the same time, most welfare recipients have work experience (83 percent), and most want to work. This was true long before welfare reform. Yet given their circumstances, and given the structure of low-wage work, it is not surprising that many have found it difficult to achieve long-term financial and familial stability.

Of those who have left the rolls since reform, a full 40 percent are without work or welfare at any given time. Of the 60 percent who do have jobs, their average wage is approximately $7 per hour. But most former recipients do not find full-time or year-round work, leaving their average annual wage estimated at just over $10,000 a year. Following this same pattern, about three-quarters of the families who left welfare are in jobs without medical insurance, retirement benefits, sick days, or vacation leave; and one-quarter work night or evening shifts. It is true that their average annual wages amount to more income than welfare, food stamps, and Medicaid combined. Yet, as Kathryn Edin and Laura Lein demonstrated in *Making Ends Meet,* taking into account the additional costs associated with employment (such as child care, transportation, clothing), working poor families like these actually suffer more material hardship than their counterparts on welfare.

The reality behind the declining welfare rolls is millions of former welfare families moving in and out of low-wage jobs. Some achieve success, most do not. Approximately one-third have found themselves back on welfare at least once since reform. Overall, two-thirds of those who have left welfare are either unemployed or working for wages that do not lift their families out of poverty. And there are still millions of families on welfare, coming in anew, coming back again, or as yet unable to find a way off the rolls.

The Personal Responsibility Act itself produced two primary changes in the lives of the working/welfare poor. On the one hand, welfare reform offered sufficient positive employment supports to allow poor families to leave welfare more quickly, and in some cases it offered just the boost that was needed to allow those families to achieve genuine long-term financial stability. On the other hand, welfare reform instituted a system of rules, punishments, and time limits that has effectively pressured the poor to steer clear of the welfare office.

A central result of welfare reform, in other words, is that a large proportion of desperately poor mothers and children are now too discouraged, too angry, too ashamed, or too exhausted to go to the welfare office. Nationwide, as the welfare rolls were declining by more than half, the rate of dire (welfare-level) poverty declined by only 15 percent. To put it another way: whereas the vast majority of desperately poor families received welfare support prior to reform (84 percent), today less than half of them do. Why are all these mothers and children now avoiding welfare? To make sense of this part of the story, one needs to understand the complicated changes that have taken place inside welfare offices across the nation. I can here offer only a glimpse.

Punishment and the Push to Work

Upon arrival at the Arbordale welfare office, the first thing one sees is a large red sign, two feet high, twelve feet long, inquiring, "HOW MANY MONTHS DO YOU HAVE LEFT?" This message is driven home by caseworkers' incessant reminders of the "ticking clock," in the ubiquity of employment brochures and job postings, and, above all, by a carefully se-

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quenced set of demanding rules and regulations.

The pressure is intense. It includes the job search that all new clients must start immediately (forty verifiable job contacts in thirty days), the "job readiness" and "lifeskills" workshops they are required to attend, the (time-consuming and difficult) child support enforcement process in which they must agree to participate, and the constant monitoring of their eligibility for welfare and their progress toward employment. Welfare mothers who are not employed within a specified period (thirty days in Arbordale, forty-five in Sunbelt City), are required to enroll in full-time training programs or take full-time unpaid workfare placements until they can find a job. Throughout, these working, training, and job-searching welfare mothers are expected to find somewhere to place their children. Although welfare recipients are all technically eligible for federal child care subsidies, only about one-third receive them. With only a $350 welfare check (the average monthly benefit for a family of three), child care arrangements can be very difficult to manage.

In Sunbelt City the pressure to get off the welfare rolls is introduced even more directly and forcefully. As is true in about half the states nationwide, Sunbelt City has a "diversionary" program designed to keep poor mothers and children from applying for welfare in the first place. Before they even begin the application process, potential welfare clients are required to attend the diversion workshop. The three workshops I went to all focused on the importance of "self sufficiency," the demanding nature of welfare requirements, and the advantages of work—and left most of the poor mothers in attendance weary and confused.

For those who persisted through the application process, their compliance to the rules of reform was assured not just by the long-term threat of time limits, but by the more immediate threat of sanctions. Any welfare mother who fails to follow through with her job search, workfare placement, training program, child support proceedings, reporting requirements, or the myriad of other regulations of the welfare office is sanctioned. To be sanctioned means that all or part of a family's welfare benefits are cut, while the "clock" keeps ticking toward that lifetime limit. National statistics suggest that about one-quarter of welfare recipients lose their benefits as a result of sanctions.

Inside the welfare offices of Arbordale and Sunbelt City many of the women I met became so disheartened that they simply gave up and left the rolls. This included women who made it through some portion of the job search, or the employment workshops, or even took a workfare placement, but just couldn't manage the pressure. Some were sanctioned, others left on their own. Connected to these, but harder to count, were all those poor mothers who gave up before they got started. Eligibility workers in Arbordale estimated that as many as one-quarter of those who started the application process did not complete it. Caseworkers in Sunbelt City guessed that about one-third of the mothers who attended their diversion workshops were ("successfully") diverted from applying for benefits. In Arbordale, about one-quarter gave up before completing the application process.

Sarah was one example of a "diverted" potential welfare client. She was the full-time caregiver for her grandchild on a lung machine, her terminally ill father, and her own two young children. She'd been managing with the help of her father's Social Security checks and her boyfriend's help. But her boyfriend had left her, and medical bills were eating up all her father's income. Sarah discovered at her initial Arbordale welfare interview that in order to receive benefits she would need to begin a job search immediately. Because no one else was available to care for her father or grandchild, she said, it just didn't make sense for her to get a job. I met her as she conveyed this story to her friends in the Arbordale waiting room, fluctuating between tones of anger and sadness. "I have to swallow my pride, and come in here, and these people just don't want to help you no more," she told us. Leaving the office, she vowed never to return. As was true of so many others, it was unclear to me what she would do.

Sonya was one example of the many sanctioned welfare clients I met, though her case was more dramatic than most. She was so quiet

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and shy that I wondered if anyone would notice how she'd been affected by reform. Twenty years old, with a tenth-grade education and two children, she'd been on welfare most of the time since she gave birth to her oldest son at age thirteen. She'd had only one job in her lifetime, and that lasted for just four months. In the hours I spent with her, it became clear to me that she suffered from serious mental health problems—matching clinical definitions of depression and obsessive-compulsive disorder. She rarely left her apartment and lived in fear that she would catch a cold, or pneumonia, or worse. When I commented on her spotlessly clean and carefully decorated apartment, she told me that she completely rearranged it at least once a month and sometimes once a week. I watched her feed lunch to her son: every can, jar, plate, and utensil in her kitchen was precisely ordered, and she was unable to continue our conversation until all the dishes were washed and dried and the counters disinfected, twice, for good measure. When we talked about the possibilities for employment, she explained that she found it necessary to take four showers a day, and worried that she couldn't handle this with a full-time job, especially, she said, since buses don't always run on schedule. In responding to my question about the men in her life she let me know, quietly, that her father had sexually abused her as a child. (She did not volunteer and I did not ask if her pregnancy at age twelve was the result of that abuse.) Sonya had been sanctioned for failing to carry out her job search. Without welfare income, she had no idea what she would do. I worried, a lot, about how she and her kids would get by.

Kendra might be included among those who found themselves too ashamed, discouraged, or exhausted to return to the welfare office when she needed help. One of the first welfare clients I met, Kendra was much loved by the caseworkers who knew her. She was sweet, quietly charming, and deeply earnest. Twenty-six years old, with two daughters aged six and eight, she had a history of working only part-time, on and off, in unskilled jobs. She'd finally landed a secure and meaningful job, she thought, working at a homeless shelter run by the Salvation Army. Even though it was the night shift and the pay was low, she felt good about helping out the homeless, and was grateful for the mentoring and support she'd received from the welfare office. She still didn't make enough money to get by without child care help and an income supplement from welfare, but was hoping for a raise, studying for her high school equivalency exam, and thinking about taking a second job. She was cheerful when last I saw her. Six months later her caseworkers told me how quickly Kendra's life had unraveled. In a heated argument, one of Kendra's brothers had shot and killed her other brother. One brother was dead, the other on his way to prison. Kendra fell apart emotionally, lost her job, and left the welfare rolls. Two caseworkers spent a day off trying to find her (an extremely rare undertaking), but no one knew where she had gone.

All these women and their children have contributed to the decline of the welfare rolls. They are a central basis for the celebration of reform. They are also a central basis for my case of cognitive dissonance.

The Costs

In focusing on the hardships wrought by reform, I do not mean to suggest that the successes of welfare reform are trivial or inconsequential. Those successes matter. I also don't mean to imply that all welfare mothers are saints and victims. They aren't. But there are many other issues at stake in the reform of welfare.

Reading the daily news these days, one can't help but notice that the topic of poverty has lost its prominence, especially relative to the early days of reform. One reason for this neglect, it seems to me, has been the highly effective campaign pronouncing the triumph of the Personal Responsibility Act. Like all the information that was invisible in popular accounts of the invasion of Iraq, the ground-level hardship and human costs of reform are largely hidden from view. Yet the price tag on welfare reform is real.

By 2002, the National Governors' Association found itself begging Congress not to follow through on plans to increase the pressure on welfare offices and welfare recipients across the nation—the costs, they explained, would

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be far too high for already stretched state budgets to bear. The U.S. Conference of Mayors found itself pleading with the Bush administration for more financial help to manage the rising populations of the hungry and homeless in American cities. Food banks were running short on food, homeless shelters were closing their doors to new customers, and local charities were raising their eligibility requirements to contend with rising numbers of people in need. The Medicaid system was in crisis, and large numbers of poor families were no longer receiving the food stamps for which they were eligible. Half of the families who left welfare had no money to buy food; one-third have had to cut the size of meals, and nearly half have had trouble paying their rent or utility bills.

In the meantime, only a fraction of welfare families have actually hit their federal lifetime limits on welfare benefits: just 120,000 welfare mothers and children had reached their limits by 2001. Given the work/welfare cycling process, and given that many families can survive at least temporarily on below-poverty wages and pieced-together alternative resources, it will take many more years for the full impact of reform to emerge. But, over the long haul, we can expect to see rising rates of hunger, homelessness, drug abuse, and crime. More children will wind up in foster care, in substandard child care, or left to fend for themselves. More disabled family members will be left without caregivers. Mental health facilities and domestic violence shelters will also feel the impact of this law, as will all the poor men who are called upon to provide additional support for their children.

Of course, this story is not apocalyptic. The poor will manage as they have always managed, magically and mysteriously, to make do on far less than poverty-level income. Many of the most desperate among them will simply disappear, off the radar screen, off to places unknown.

In any case, assessing the results of welfare reform is not just a question of its impact on the poor. It is also a question of what this law says about our collective willingness to support the nation's most disadvantaged and about the extent to which welfare reform actually lives up to the more worthy goals it purports to champion. ●

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After SARS: Fear and Its Uses

Judith Walzer Leavitt and Lewis A. Leavitt

In the mid-twentieth century, antibiotics and modern medicine seemed to be eliminating the threat of infectious diseases. But since the 1980s and the emergence of HIV/AIDS and the subsequent appearances of Ebola, Hanta Fever, West Nile Virus, Lime Disease, SARS, and Monkey Pox, it is clear that the dangers posed by new infectious diseases or by old ones reappearing in drug-resistant forms (or as weapons of bioterrorism), are fearsome and compelling. Among the recent outbreaks, SARS especially caused hysteria around the world and demonstrated how important public health is to global safety. How much should we be alarmed by each new disease? And how might we use our fears to energize public health agencies and force the public generally to confront the issues of equity and liberty raised by infection?

Despite data showing that endemic diseases such as tuberculosis and malaria kill more people worldwide than the emerging diseases (with the important exception of HIV/AIDS, which has become the number three cause of death in the world), it is the new and unknown illnesses that produce anxiety. Anxiety doesn't grow only from statistical dangers. The sense of personal risk—when disease comes close to our doorstep—seems to be far more important in determining responses than do the numbers and distribution of actual cases. Our worries begin with our lack of knowledge about each new disease, and they grow as a result of media coverage that emphasizes danger and evokes panic even while appealing for calm.

The dangers are real. What the recent disease outbreaks demonstrate is that public health agencies and standards, in the United States and elsewhere too, have fallen prey to their previous successes. In recent years, believing we had conquered infectious disease, we grew complacent and withdrew support from health departments around the country. But now HIV/AIDS, Lyme disease, West Nile Virus, and SARS have shattered our complacency. Actually, it shouldn't have taken new diseases to do that. Consider that, in 1993, faulty water purity surveillance led four hundred thousand people in Milwaukee to succumb to (very old-fashioned) gastrointestinal illness. The protection we get from state agencies, our collective ability to prevent or deal with health crises, is lower today, in many areas, than it was in the past.

We need to worry about this—more, perhaps, than about any particular disease. The decrease in available resources devoted to public health is a serious political problem. Old diseases such as tuberculosis and malaria continue to kill; new diseases—like SARS—are not taking lives at the same level but serve nonetheless to alert us to the fact that we are not safe. If the fear of SARS, or of bioterrorism, can lead us back to more general support for public health, then this is a time to let our worries be our guide.

A little bit of history can provide some perspective on the issues raised by SARS and other emerging diseases. Among the areas left to the states when the Constitution was adopted were public health and welfare. What this meant in practice emerged slowly over time; by the last third of the nineteenth century, most states and big cities had well-developed health departments. These agencies (often working in tandem with departments of public works) took on the mammoth tasks of taming the urban environment: building water and sewage systems, paving streets, and overseeing the food and milk supplies. New York

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City in the 1840s, for example, engineered the extraordinary task of bringing clean water from the Croton River, forty-five miles north of the city, via a complicated system of viaducts, bridges, and pipes, into city homes and businesses. In an even more amazing engineering feat, beginning in the 1850s, Chicago, situated on muddy flatland, literally reconfigured the geography of the downtown area, lifted city streets and buildings so that sewage could be carried away, and ultimately reversed the direction of the Chicago River—all this in order to protect the city water supply and the public's health. These are jobs that the private sector could not have undertaken, much less accomplished. Most important for our purposes here, health departments developed increasingly powerful—but also intrusive—ways of controlling infectious diseases.

Rarely in the late nineteenth and early twentieth century did the powers of health departments increase because of endemic diseases such as tuberculosis. Rather, politicians responsible for city budgets responded more readily to the new and frightening diseases that periodically swept through American cities—smallpox, cholera, yellow fever, or plague. Reasoning that because such diseases were not always present, they must be preventable, health officials waged active campaigns to prevent them. In the process, public health departments grew, and their powers and budgets greatly expanded. By the early twentieth century, these departments routinely asserted their authority over individuals who might stand in the way of their activities—softening their interventions, sometimes, with popular education campaigns to teach individuals to change their personal habits and behavior.

The delivery of clean water, safe food, and immunizations has had a remarkable effect on everyday life in the United States. Each of these accomplishments was achieved over time and sustained by a public health infrastructure that required, first, the development of agricultural and industrial sanitary standards and second, the creation of government agencies authorized to enforce these standards. By the twentieth century, these agencies included federal, state, and local departments of health, the Environmental Protection Agency, and the Food and Drug Administration. From nineteenth-century milk stations in cities such as Rochester, New York, and Milwaukee to the twentieth-century Centers for Disease Control and Prevention, multiple levels of protection were created and integrated. Infectious diseases are very local: people are infected and must be isolated one by one, and data must be gathered in each community. But these diseases are also global: SARS hopscotched the world via transcontinental flights. Early warning systems require global data. The work of protection cannot be shouldered by individuals or local governments alone.

Perhaps the most dramatic example of integrated health agencies working to protect the public from epidemic threat came in New York City in 1947. A traveler brought smallpox from Mexico to the city, walking the streets and shopping with his wife, exposing others to the disease, before his illness was so advanced that he entered Bellevue Hospital for treatment. Physicians had not seen a case of smallpox in decades, and did not recognize it until the man had died and exposed still more people. Alerted to the danger, the city health department, with help from state and federal agencies, vaccinated more than six million New Yorkers in a month, the largest and most successful smallpox immunization campaign in American history. Swift action and the effective use of community organizations and all levels of government protected New Yorkers from a potential health disaster.

Today we expect to be free of infectious disease; we take our health for granted. Infectious, respiratory, and gastrointestinal illnesses are relatively few and far between. When we are afflicted with such illnesses, we expect to recover quickly and fully. We do not worry too much about exposure among strangers; when we visit other people's buildings we drink the water and enjoy the air conditioning. We have come to assume that we are safe in our everyday environment.

BUT OUR SAFETY has come at a cost to our civil liberty. Early in the twentieth century, New York's medical health officer, Hermann Biggs, realized that the powers vested in health departments were "extraordi-

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nary and even arbitrary." When individuals stood in the way of health department good works, especially in times of epidemics, they were pushed aside. Such powers, although wielded lightly in many cases by reformers who believed they were making the world safer for everyone, became the focus of significant resistance. As we contemplate the re-expansion of health powers today, examples from early twentieth-century Milwaukee, San Francisco, and New York can provide cautionary lessons on how best to proceed.

In Milwaukee, during a smallpox outbreak in 1894, a month of public rioting resulted from health department attempts forcibly to remove sick children from their families to take them to the isolation hospital. The health commissioner, determined to save lives from this horrible disease, vowed to "break heads" to enforce the law. He failed to notice that the methods he used, because of the resistance they provoked, rendered his efforts at smallpox control ineffective. The "broken heads" were disproportionately those of poor immigrants, who were especially wary of governmental authority. Because of the perceived discrimination, the complete lack of sensitivity to cultural difference, and the highly coercive tactics used by the health department, Polish and German immigrants took to the streets and ultimately managed to prevent the commissioner's enforcement of the health measures.

In San Francisco, the "arbitrary" powers of the health department fell disproportionately on Chinatown when the plague hit in 1900. The first case of plague was diagnosed in a Chinese man named Wong Chut King, and before daybreak the next day, the Chinese section of the city was quarantined and traffic in and out curtailed. Nonetheless, the white residents of the section were permitted to come and go. Court action ultimately brought a semblance of justice to the situation, and the quarantine fell, but not before the health department's racism had been revealed.

In New York City, the famous case of an Irish immigrant woman named Mary Mallon demonstrated the risks to individual freedom of public health activity taken in the name of the many. Found to be a healthy carrier of typhoid fever, "Typhoid Mary" was quarantined on an island in the East River for twenty-six years, her civil liberties radically restricted, because her cooking endangered anyone who ate her food. Even while thousands of other carriers walked the city's streets, Mallon remained on the island, a striking example of how far the health department could go in order to preserve the public's health.

What are the obligations of sick and well individuals to help and protect each other? And what role should government play in enforcing those obligations and protecting Americans from the risk of infectious disease? In the cases of the Milwaukee smallpox riots, Wong Chut King, and Mary Mallon, it is relatively easy to see how discrimination and coercion worked against successful public health efforts. They made everything more difficult by alienating the very people whose trust was needed in order to bring them into the health care system.

Two things are clear, and from these we must build our medical and political responses to the threat of epidemic. First, the public health risk is real and immediate: worldwide an estimated six million people will die in the coming year from tuberculosis, malaria, and AIDS combined. If we can use lesser killers such as SARS, West Nile Virus, Monkey Pox, and other emerging diseases to hammer the point home, we can strengthen health standards, rebuild public infrastructures, and demonstrate how government can work in the general interest. Second, public health activity itself carries risks. So we must also work to ensure that government agencies do not overstep the bounds of fairness and equity as they wield their big stick.

The argument for fairness needs to address three dangers: the labeling of whole categories of people as threats to the public's health; the isolation of individuals and neighborhoods; and possible scapegoating in the allocation of responsibility for the spread of disease. Let us consider each of these in turn.

Labels. As we learned from our early experience with HIV, just to be identified as a new disease sufferer or carrier can itself be threatening. Calling Mary Mallon "Typhoid Mary," designating some SARS carriers "super spreaders," or describing an individual as "pa-

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tient zero," attaches a stigma to the named people. Labeling an individual or a group of individuals dangerous to the public is not a benign act that leads automatically to medical understanding and cooperation. Rather, stigmatization can make disease control more difficult. The phrase "Typhoid Mary" might have initially been a simple description, but Mary Mallon never saw it so simply. She understood that it took away her individuality, her self, her life, and this led Mallon vigorously to resist all public health efforts to "deal" with her. "Stigma and discrimination are the enemies of public health," wrote Jonathan Mann, former Director of the International AIDS Center. When people who are infected are treated as if they were polluted, they are unlikely to cooperate in the treatment. In order to stem epidemic threats, we need to educate without stigmatizing, to work toward building trust rather than resistance.

Isolation. In thinking about how far the government might go to control infectious diseases, we must consider that isolation is one of the most useful and one of the most frightening possibilities. Some states considered isolating all individuals infected with HIV; others isolate only "uncooperative" infected individuals. Cuba provides an example of how the delicate balance between personal liberty and public health protection can be subverted. In 1986, it began a national program to contain AIDS, which included systematic screening, isolation of all HIV positive individuals, and the requirement that all HIV positive pregnant women abort. The plan was not voluntary. The government forced citizens to leave their work and their communities and move to settlements of the infected, separated from the larger society by barbed wire. Such extreme measures resulted in much individual suffering without completely containing the virus. This experience should help guide our thinking about the uses and abuses of isolation.

Nonetheless, isolation of the sick has to be part of twenty-first-century public health administration. For infectious diseases such as SARS, which maintain their infectivity for days after the initial symptoms appear, and for which there is (as yet) no treatment that stops or reduces infectivity, isolation of the victims is the only known method of preventing the spread of the disease. Isolation can be onerous for people who are ill; it is especially so for people who may be infectious but are not very ill, and egregiously so for those who are healthy but carriers. The Cuban example shows us the suffering of individuals caused by an authoritarian approach to isolation. But the story of the spread of SARS in south China shows us the suffering and death that occurs when carriers are not isolated. Effective and fair public health responses lie somewhere between these two extremes.

A HEALTH POLICY that emphasizes a custodial over a health-keeping function makes it easier to expel individuals from society. No doubt, there will always be men and women who have to be forcibly separated from their fellows in order to keep them from willfully transmitting disease. But in more ordinary cases, we need a policy more effective than coercion, one that recognizes that people who are potentially dangerous to others must be made aware of their infectivity and taught how to minimize or prevent it. If there is public confidence in a benevolent and nondiscriminatory health care system, people would be more likely to cooperate even with (temporary) isolation, and coercion would be less necessary.

Scapegoats. Unfortunately, health policies in the United States have often been discriminatory and unfair. We have scapegoated certain groups or individuals for spreading disease and used the threat of disease to divide people along already familiar fault lines of race and class. Mary Mallon perceived that her status as an immigrant, single, working-class woman led to her unfair treatment at the hands of health officials. In San Francisco in 1900, health officials blamed all the city's Chinese inhabitants for causing plague, rather than tracing the contacts of the sick. In the 1930s, the U.S. Public Health Service began an experiment in Macon County, Alabama, to trace the "natural" development of syphilis in African American males, and in the process denied the participants the benefits of effective therapy. The Tuskegee syphilis study, now notorious, lasted forty years. In our nation's history, im-

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migrants, the poor, and African Americans have frequently been despised and feared, and then labeled and isolated, as harbingers of disease and death.

Fairness in health policy is not just a matter of consistent application of the laws. If so, the Cuban example would be a model. We need to develop substantive policies that consider both civil liberty and public health protection as equally valued national priorities. In 1922, A.J. Chesley of the Minnesota Board of Health described the public health dilemma we still face today—in terms appropriate to his age, when the business of America was business, and still to ours. He argued that officials aiming to reduce the threat from diseases first had to convince the public that it was good business and good public policy to provide funds for health work. People had to understand that loss of productivity caused by preventable diseases was too costly to be tolerated. Second, he urged that those individuals who might endanger the public health had to be economically and socially supported so that they would be willing to endure hardships (such as isolation). Chesley understood that the public was right to demand protection against communicable diseases, but he insisted that the people who carried those diseases were also right to demand protection. Only by understanding the perspectives both of those at risk of catching a disease and of those who might be carrying it could realistic public health programs develop.

Historically, epidemics have not been controlled by the actions of individuals or the private sector. A well-maintained infrastructure, broad public coalition building, and community education and organizing have been essential to successful public health campaigns. The new invasions of infectious disease demonstrate again that protecting public health requires building institutions and procedures that are adequately funded and that operate fairly. Our recent experience with SARS isolation requires us to look especially carefully (at a time when indefinite detention seems possible again) at the methods in place for dealing with the next plague. Effective epidemic control, justly administered, with the smallest restriction of individual freedom compatible with public health, can give government what it doesn't have now—a good name. ●

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Multiculturalism and Welfare

Keith Banting and Will Kymlicka

THE PAST THIRTY years have witnessed a dramatic change in the way Western democracies deal with ethnic minorities. In the past, ethnic diversity was often seen as a threat to political stability, and minorities were subject to a range of policies intended to assimilate or marginalize them. Today, many Western democracies have adopted a more accommodating approach. This is reflected in the widespread adoption of multiculturalist policies for immigrant groups, the acceptance of territorial autonomy and language rights for national minorities, and the recognition of land claims and self-government rights for indigenous peoples.

We will refer to all policies of this kind as "multiculturalist policies." They go beyond the protection of the basic civil and political rights guaranteed to all individuals in a liberal-democratic state to extend some level of public recognition to ethnocultural minorities and some level of support for the maintenance of their identities and practices.

The adoption of these policies has been controversial, for two reasons. The first is a philosophical critique, which argues that they are inherently inconsistent with basic liberal-democratic principles. Since the mid-1990s, however, this philosophical debate has been supplemented by a second argument: namely, that they make it more difficult to sustain a robust welfare state. Critics worry that such policies erode the interpersonal trust, social solidarity, and political coalitions that sustain strong redistributive policies. This claim is central to recent critiques of multiculturalism by Brian Barry, Todd Gitlin, Alan Wolfe, Jyette Klausen, and others.[1]

Our goal is to test this second critique. Because the complaint is an empirical one, our method is also an empirical one. Using cross-national data, we aim to test whether countries adopting robust multiculturalist policies have fared worse on various measures of welfare provision than those countries that have fewer or no such policies.

It is important to emphasize that our focus is on multiculturalist *policies*. The word "multicultural" is sometimes used in a purely demographic sense to refer to high levels of ethnic or racial diversity. A society is "multicultural" in this sense if it contains sizeable ethnic or racial minorities, regardless of how the state responds to this diversity. Some people believe that ethnic diversity as such makes it more difficult to build or sustain a robust welfare state, whether or not the state actively accommodates this diversity. Countries that are more racially homogenous, or that admit few immigrants, are said to have an easier time constructing a welfare state. This is not our main focus, nor is it the main focus of critics of multiculturalism. It is not the level of ethnic/racial diversity they are worried about, but rather government policies that officially recognize and accommodate this diversity.

The Case Against Multiculturalist Policies

We begin by summarizing the three chief arguments advanced by these critics.

1. The crowding out effect. According to this line of argument, multiculturalist policies weaken pro-welfare coalitions by diverting time, energy, and money from economic "redistribution" to cultural "recognition." People who would otherwise be actively involved in fighting to enhance economic redistribution, or at least to protect the welfare state from right-wing retrenchment, are instead spending their time arguing about multiculturalism.

Gitlin gives an example of this. He describes how left-wing students at the Univer-

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sity of California-Los Angeles fought for a more "inclusive" educational environment, demanding greater representation of minorities in the faculty and curricula. At the same time, however, they largely ignored huge budget cuts to the state educational system that were making it more difficult for minority students even to get to UCLA. As he puts it, "much of the popular energy and commitment it would have taken to fight for the preservation—let alone the improvement—of public education was channeled into acrimony amongst potential allies." This channeling is captured nicely in one of his chapter titles: "Marching on the English Department while the Right Took the White House."

2. The corroding effect. Another line of argument suggests that multiculturalist policies undermine the welfare state by eroding trust and solidarity among citizens, and hence weakening popular support for redistribution. Multiculturalism erodes solidarity because it emphasizes differences between citizens, rather than commonalities. Citizens have historically supported assistance for their disadvantaged co-citizens because they viewed these co-citizens as "one of us," bound together by a common identity and sense of belonging. Multiculturalism is said to challenge this overarching identity by telling citizens that what divides them into separate ethnocultural groups is more important than what they have in common.

According to Wolfe and Klausen, for example, in the British welfare state of the 1940s and 1950s, "people believed they were paying the social welfare part of their taxes to people who were like themselves." But the abandonment of the "long process of national homogenization" has led to growing "tax resistance"—for "if the ties that bind you to increasingly diverse fellow citizens are loosened, you are likely to be less inclined to share your resources with them."

3. The misdiagnosis effect. A third argument suggests that multiculturalist policies lead people to misdiagnose the problems that minorities face. It encourages the view that the problems are rooted primarily in cultural "misrecognition," and that the solution lies in greater state recognition of ethnic identities and cultural practices. In reality, however, these "culturalist" solutions will be of little or no benefit, because the real problems lie elsewhere.

This argument comes in two different versions. The first claims that the focus on cultural difference has displaced attention to *race* and ignored the distinctive problems facing groups such as African Americans. Barry, for example, argues that "one of the most serious mistakes by multiculturalists is to misunderstand the plight of American blacks." He quotes Kwame Anthony Appiah's observation that

> it is not black culture that the racist disdains, but blacks. There is no conflict of visions between black and white cultures that is the source of racial discord. No amount of knowledge of the architectural achievements of Nubia or Kush guarantees respect for African-Americans . . . culture is not the problem, and it is not the solution.

A second version of the misdiagnosis argument claims that the focus on ethnic or racial difference has displaced attention to *class* and thereby made pan-ethnic alliances on class issues less likely. On this view, the real problem is economic marginalization, not cultural misrecognition, and the solution is to improve people's standing in the labor market, through better access to jobs, education and training, and so on. The multiculturalist approach encourages people to think that what low-income Pakistani immigrants in Britain need most is to have their distinctive history, religion, or dress given greater public status. In fact, their real need is for improved access to decent housing, education, and gainful employment—a need they share with the disadvantaged members of the larger society or other ethnic groups, which can only be met through a pan-ethnic class alliance.

At first glance, these three critiques seem to have some plausibility. It is an indisputable fact that the enactment of multiculturalist policies has coincided with a period of retrenchment in many social programs. So the question naturally arises whether there is any causal connection between the enactments and the retrenchments.

But there are good reasons for doubting this

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connection. After all, the restructuring of the welfare state occurred throughout the Western democracies, affecting countries that strongly resist multiculturalist policies, such as France, as well as countries, such as Canada, that have favored them. It is not clear that the presence or absence of these policies was an important factor in whether or how the welfare state was restructured. Moreover, the three specific critiques of multiculturalism are themselves open to criticism. Let's take them one by one.

The claim that multiculturalist policies "crowd out" welfare issues rests on the assumption that there would have been a sizeable coalition of politically engaged citizens willing to act to defend the welfare state, were they not distracted by cultural issues. Yet, as the critics themselves acknowledge, the main reason why issues of redistribution have been occluded is that most people, including most leftists, have become fatalistic about economic inequalities. Moreover, as Barry writes, this "despair at the prospects of getting broad-based egalitarian policies adopted" pre-dated the rise of multiculturalism rather than being caused by it. Barry worries that this economic fatalism will become a "self-fulfilling prophecy" if people's energies are "dissipated" in struggles over multiculturalist policies. Perhaps. But the argument assumes there is a fixed amount of time, energy, and money that will be spent on political mobilization, such that any effort on one issue necessarily detracts from another. But maybe political mobilization is not zero-sum. Perhaps the real challenge is to get people to believe that their activity can make a difference on any issue worth fighting about and then to involve themselves in politics. Once they have this sense of political efficacy and are politically involved, they are likely to be active across a range of issues. So the struggle for multiculturalist policies may actually have helped to reinvigorate the left.

The argument that multiculturalism corrodes inter-ethnic solidarity is also debatable. It assumes that prior to the adoption of multiculturalist policies there were high levels of inter-ethnic solidarity, which are now being eaten away. Historically, however, Western states often adopted exclusionary or assimilationist policies precisely because there was so little trust or solidarity across ethnic and racial lines. Dominant groups felt threatened by minorities, superior to them, or indifferent to their well-being, and so attempted to assimilate, exclude, exploit, or disempower them. This, in turn, led minorities to distrust dominant groups. In these situations, multiculturalist policies cannot be the original cause of distrust or hostility. Indeed, by adopting them, the state is trying to encourage dominant groups not to fear or despise minorities, and minorities to trust the larger society, thereby helping to strengthen the solidarity needed for a strong welfare state.

Finally, consider the misdiagnosis argument, which argues that multiculturalism blinds people to the salience of noncultural factors in explaining group disadvantage. The paradigm case of this, according to both Barry and Gitlin, is the misdiagnosis of the situation of African Americans, for whom issues of race and class are much more salient than cultural recognition. This is just one example, they argue, of a more general tendency.

But critics acknowledge that the relative salience of these factors differs across minority groups. For some groups, issues of class are less significant than cultural recognition. For example, Jews in North America, or Hong Kong immigrants, have higher than average levels of income and education, yet have faced criticism or disdain for their religious and cultural practices, stereotyping in the media, and greater vulnerability to violence. There are in fact different dimensions on which ethnic groups can face injustice—including race, class, and culture—and groups may fare better on some dimensions than others. The misdiagnosis argument, then, claims that multiculturalist policies lead people to minimize the salience of the race and class dimensions of inequality and to exaggerate the salience of the cultural dimension.

Why would they have this effect? The assumption seems to be, again, that people's sense of justice is zero-sum: enhanced sensitivity to one form of injustice inevitably entails reduced sensitivity to other forms. On this view, people who are keenly sensitive to racism or sexism, for example, are inevitably less sensi-

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tive to class inequality or cultural accommodation, and vice versa.

Undoubtedly there are circumstances where a fixation on one form of injustice can blind people to other forms. The paradigm case, historically, is Marxism, which was ideologically committed to the view that class inequality was the only "real" inequality, and that sexism and racism were epiphenomenal and would disappear with the abolition of classes. Certainly, we need to avoid these sorts of dogmatic presumptions. It is important for people to consider the claims of various groups as they are raised and with an open mind. Does multiculturalism discourage this open-minded approach to the salience of different forms of inequality? One could argue that it has precisely the opposite effect: to supplement and improve our conceptual tools for understanding the full range of injustices faced by different groups in our society.

In short, none of the arguments for the alleged harmful impact of multiculturalist policies on the welfare state is self-evident. It should be clear that this debate cannot be resolved by more armchair theorizing or by simply trading anecdotes. We need to look more closely at the evidence.

Unfortunately, there is little readily available evidence. The critics themselves do not cite any empirical studies that show a correlation or causal connection between the adoption of multiculturalist policies and the erosion of the welfare state. This is not surprising because, so far as we can tell, there are no empirical studies on this topic for critics (or defenders) to cite. Several studies have explored the impact of ethnolinguistic or racial diversity per se on economic and social outcomes. Scholars in several fields—development economists, experimental economists, students of social policy in the United States, analysts of immigration and the rise of radical right parties in Europe—have argued that the welfare state may be more difficult to sustain in countries with high levels of ethnic and racial diversity. These studies are important, but are not directly related to our debate. They focus on ethnic diversity as a demographic phenomenon and are silent on the implications of our response to such diversity. Existing studies tell us nothing about whether the adoption of multiculturalist policies increases the negative relationship between ethnic diversity and social redistribution, as the critics suggest, or mitigates it, as the defenders reply. We therefore have to find a way of illuminating this issue more directly.

Testing the Complaint

How then can we test the critique? Our attempt involves two steps. First, we clarify what exactly we mean by multiculturalist policies and categorize Western democracies as "strong," "modest," or "weak" in their enactment of such policies. Second, we test whether the "strong" countries have fared worse, in terms of various welfare state measures, than the "modest" or "weak" countries.

Thus, our definition of multiculturalist policies focuses on policies that go beyond the non-discriminatory enforcement of the traditional civil and political rights of citizenship for the individual members of ethnic groups. In some countries, the rhetoric of multiculturalism is advanced to defend such nondiscriminatory protection of the common rights of citizenship. For example, some German politicians have invoked multiculturalist rhetoric to eliminate legal provisions that made it difficult for ethnic Turks to become citizens and to extend the scope of antidiscrimination laws to cover Turkish immigrants. These are not the sorts of policies that our critics view as a threat to the welfare state. They are only concerned with policies that go beyond the protection of traditional individual rights to provide some additional form of public recognition to ethnic groups. Because this is the concern of critics, we will limit our analysis to such policies.

But what does it mean for public policies to provide "recognition," "support," or "accommodation" to ethnic groups? It is difficult to answer this question in the abstract, because different groups seek different policies. To identify these policies more precisely, it is useful to distinguish different categories of ethnic groups and to see how Western states have accommodated them (or not). For the purposes of this article, we will focus on the two most common types of ethnic groups: immigrants and national minorities.

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Immigrants: In the past, traditional countries of immigration (Australia, Canada, New Zealand, and the United States) encouraged immigrants to assimilate to the pre-existing society, with the hope that over time they would become indistinguishable from native-born citizens in their speech, dress, recreation, and way of life generally. Any groups that were seen as incapable of this sort of cultural assimilation were prohibited from emigrating in the first place or from becoming citizens. This was reflected in laws that barred Africans and Asians from entering these countries for much of the twentieth century (or from becoming citizens).

Since the late 1960s, however, we have seen two dramatic changes: first, the adoption of race-neutral admissions criteria, so that immigrants to these countries are increasingly from non-European (and often non-Christian) societies; and second, the adoption of a more multicultural conception of integration, one that expects that many immigrants will visibly and proudly express their ethnic identity, and that accepts an obligation on the part of public institutions (police, schools, media, museums, and so on) to accommodate these identities.

These changes have occurred, to varying degrees, in most of the traditional countries of immigration. In Canada and Australia, the shift was formally marked by the declaration of a multicultural policy by the central government. The United States does not have a federal policy of multiculturalism, but if we look at lower levels of government, such as states or cities, we often find a broad range of multiculturalist policies in school curricula or in police and hospital programs. Similarly, although there is no nationwide multiculturalist policy in Britain, many of the same ideas are pursued through a race relations framework. Among countries that legally admit immigrants as future citizens, the main exception to the trend is France, which retains an assimilationist conception of republican citizenship.

It is a different story in those countries that do not legally admit immigrants, such as most countries of northern Europe. These countries often contain large numbers of "foreigners," in the form of illegal economic migrants, asylum seekers, or "guest-workers," but these people are not admitted as part of an immigration policy. Some of these countries have adopted aspects of a multicultural approach (Sweden and the Netherlands). But in general, the trend is more pronounced in traditional countries of immigration.

What are the specific policies that reflect this shift in approach? We take the following nine policies as the most common:

(1) constitutional or parliamentary affirmation of multiculturalism at the central and/or regional and municipal levels;

(2) the existence of a government ministry or advisory board to consult with ethnic communities;

(3) the adoption of multiculturalism in school curricula;

(4) the inclusion of ethnic representation/sensitivity in the mandate of public media or in the criteria for media licensing;

(5) exemptions from dress codes, Sunday-closing legislation, and so on (either by statute or by court decision);

(6) the allowance of dual citizenship;

(7) the funding of ethnic organizations or activities;

(8) the funding of bilingual education or mother-tongue instruction;

(9) affirmative action for disadvantaged immigrant groups.

If a country had most or all of these policies in place for much of the period between 1980 and the late 1990s, we have categorized it as "strong." If it only adopted one or two, we have categorized it as "weak." If it falls in between, we have categorized it as "modest." Here are the categories and countries:

Strong: Australia, Canada, New Zealand
Modest: Britain, the Netherlands, Portugal, Sweden, United States
Weak: Austria, France, Germany, Greece, Spain, Switzerland

We were not able to categorize with confidence several other countries in our sample that have sizeable immigrant populations, although we know that they all fall into either the "modest" or "weak" category. So our immigrant categorization includes a fourth category:

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Weak/Modest: Belgium, Denmark, Finland, Ireland, Italy, Norway

Sizeable national minorities: The second trend concerns the treatment of substate, minority nationalisms, such as the Québécois in Canada, the Scots and Welsh in Britain, the Catalans and Basques in Spain, the Flemish in Belgium, the German-speaking minority in South Tyrol in Italy, and the people of Puerto Rico under U.S. rule. In all of these cases, we find a sizeable group (at least a hundred thousand people), regionally concentrated, that conceives of itself as a nation within a larger state, and mobilizes behind nationalist political parties to achieve recognition of its nationhood, either in the form of an independent state or through territorial autonomy within the larger state.

In the past, Western countries attempted to suppress these forms of substate nationalism by restricting minority language rights, abolishing traditional forms of regional self-government, and encouraging members of the dominant group to settle in the minority group's traditional territory so that the minority will be outnumbered even in its home. Today, however, all the countries mentioned above have accepted the principle that these substate national identities will endure into the indefinite future and that the sense of nationhood must be accommodated in some way. This accommodation has typically taken the form of "multi-nation federalism": that is, creating a federal or quasi-federal subunit in which the minority group forms a local majority and so can exercise meaningful forms of self-government. Moreover, where the group has a distinct language, this language is typically recognized as an official state language, at least within its federal subunit, and sometimes throughout the country as a whole.

At the beginning of the twentieth century, only Switzerland and Canada had adopted this combination of territorial autonomy and official language status for substate national groups. Since then, however, most Western democracies that contain sizeable nationalist movements have moved in the same direction. The list includes the adoption of autonomy for the Swedish-speaking Aland Islands in Finland after the First World War, autonomy for South Tyrol and Puerto Rico after the Second World War, federal autonomy for Catalonia and the Basque Country in Spain in the 1970s, for Flanders and Wallonia in Belgium in the 1980s, and most recently for Scotland and Wales in the United Kingdom in the 1990s. Among the Western democracies with a sizeable national minority, the main exception to this trend is France, although it too is negotiating autonomy for its main substate nationalist group in Corsica. As a result, perhaps the only country that remains strongly opposed to the official recognition of substate nationalism is Greece, where the once-sizeable Macedonian minority has now been swamped in its traditional homeland.

What are the specific policies that are indicative of this shift? We consider the following six as emblematic of a multicultural approach to substate national groups:

(1) federal or quasi-federal territorial autonomy;

(2) official language status, either in the region or nationally;

(3) guarantees of representation in the central government or on constitutional courts;

(4) public funding of minority language universities/schools/media;

(5) constitutional or parliamentary affirmation of multinationalism;

(6) acceptance of international personality (allowing the substate region to sit on international bodies, for example, or sign treaties, or have their own Olympic team).

If a country had most or all of these policies in place during the 1980s and 1990s, we have categorized it as "strong"; if only one or two, as "weak," and if in-between as "modest." These are the categories and countries:

Strong: Belgium, Canada, Finland, Spain, Switzerland

Modest: Italy, United Kingdom,[2] United States (with respect to Puerto Rico)

Weak: France, Greece

These categorizations are obviously open to refinement. But we think they represent a reasonable starting point. If, as critics fear, the adoption of multiculturalist policies has powerful crowding out, corroding, or misdiagnosis

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effects, there should be a demonstrable linkage between the strength of multiculturalist policies and the weakening of the welfare state. Is there?

Multiculturalist Policies and the Welfare State

For evidence of changes in the strength of the welfare state, we rely on two measures: social spending as a proportion of gross domestic product (as reported by the Organization for Economic Cooperation and Development); and the redistributive impact of government taxes and transfers (as calculated by the Luxembourg Income Study). Each of these measures taps a different dimension of the social role of the state. Social spending as a proportion of GDP measures how much of the nation's resources are directed by government to social purposes. On its own, however, this measure says little about the extent of redistribution effected by these expenditures. Our second measure, which compares inequality in market incomes and inequality in disposable incomes after taxes and transfers, is the most direct indicator of the redistributive role of the state.

Our focus is on *change* in social spending and redistribution from the early 1980s to the late 1990s, not on differences in the overall *level* of spending and redistribution. When critics argue that there is a correlation between multiculturalist policies and the erosion of the welfare state, they are not arguing that only weak welfare states adopt these policies. Rather they argue that even countries that had developed robust welfare states and then adopted strong multiculturalist policies are likely to have witnessed greater decline in levels of redistribution as compared to countries with weak versions of the same policies. Their claim is not about differences in absolute levels, but about changes in levels over time. Hence our test, too, focuses on the size and direction of changes in social spending and redistribution between the early 1980s and the late 1990s.

Let's start with immigrant groups. Have countries that have gone furthest in accommodating immigrant ethnicity had more difficulty sustaining their welfare states than countries that have resisted accommodation? We provide the details on the data and the measures elsewhere,[3] but for our purposes here, it is sufficient to compare the averages for groups of countries:

Ranking	Change in Social Spending *as % of GDP*	Change in Redistributive Impact
Strong	+46.4	+15.3
Modest	+10.4	-3.1
Weak	+39.4	+10.9
Weak/Modest	+25.7	+6.0

Some readers may be surprised that, despite decades of cuts in many countries, social expenditures have continued to rise as a proportion of GDP. Demographic and cost pressures in major programs such as pensions and health care have offset retrenchment on this measure. What is critical for our purposes, however, is that on both the spending and redistribution measures, countries with strong multiculturalist policies have fared better than countries with weak policies. It is true that countries in the "modest" category did not perform as well, a result driven primarily by experience in the United Kingdom and the United States. But overall, there is no evidence of the systematic relationship that critics of multiculturalism have predicted.

Let's turn now to national minorities. Have countries that have gone furthest in accommodating minority nationalisms had a harder time sustaining their social policies than countries that resisted acknowledging their "nations within"? The answer is clearly no.

Ranking	Change in Social Spending *as % of GDP*	Change in Redistributive Impact
Strong	+38.1	+12.2
Modest	+27.9	-5.4
Weak	+36.5	+11.4

Once again, there is virtually no evidence of a connection between the adoption of multiculturalist policies and changes in the welfare state. Indeed, social spending grew slightly faster and redistribution increased slightly more in "strong" than in "weak" countries.

So far, we have been looking across the broad sweep of the Western democracies. In

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fairness, it must be said that most critics are focused on a narrower set of countries, especially the "Anglo" countries. In Barry's book, for example, almost all the examples are drawn from Australia, Canada, the United Kingdom, and the United States. Narrowing our sample to these four countries should, therefore, provide a good test of his theory. Although Barry does not provide a systematic ranking of countries, he does say that Canada has "gone farther down the [multiculturalist] path" than the United Kingdom and the United States, and he implies that Australia is closer to Canada in this regard. If his argument is correct, we should expect Canada and Australia to have fared worse on welfare state measures than the United Kingdom and the United States. In fact, the results are just the opposite. If we compare these four countries, the stronger pair has done better than the more modest pair, especially on redistribution, which is Barry's main concern.

Ranking	Change in Social Spending *as % of GDP*	Change in Redistributive Impact
Canada	+35.3	+23.0
Australia	+57.5	+7.5
United Kingdom	+35.7	-9.1
United States	+11.2	-3.8

In short, there is no evidence of a consistent relationship between the adoption of multiculturalist policies and the erosion of the welfare state. This result should not be surprising. Students of social policy established long ago that differences in social spending across welfare democracies are related to such factors as economic growth, the openness of the economy, unemployment levels, the age structure of the population, the religious complexion of the country, the strength of organized labor, the ideological position of historically dominant political parties, and the structure of political institutions. In comparison with such core structural factors, it would be surprising if multiculturalist policies proved to be a powerful factor. Our analysis has obvious limits, and we hope it stimulates further research. Nevertheless, the preliminary evidence marshaled here is clear: the case advanced by the critics of multiculturalist policies is not supported.

Conclusions flowing from cross-national analyses do not necessarily apply with equal force to each individual country. There may be individual cases in which there is a tension between multiculturalism and the welfare state, and further research is needed to explore such cases. In particular, the United States is a complex case. Race has played a corrosive role in the politics of American social policy, and it is not surprising that many of the examples advanced by the critics come from American experience. However, we would advance two qualifications. First, the racialization of U.S. social policy was well established before the enactment of any multiculturalist policies, and it seems inappropriate to lay the blame for fragmenting the welfare coalition solely or primarily at their feet. Second, it is important not to generalize from the U.S. experience to other contexts.

The growing ethnic diversity of Western societies has generated pressures for the construction of new and more inclusive forms of citizenship and national identity. The evidence presented in this article suggests that debates over the appropriateness of multiculturalist policies as one response to this diversity should not be pre-empted by unsupported fears about their impact on the welfare state. ●

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1. Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Polity, 2001); Todd Gitlin, *The Twilight of Common Dreams: Why America is Wracked by Culture Wars* (Metropolitan, 1995); Alan Wolfe and Jyette Klausen, "Other Peoples," *Prospect* (Dec. 2000), pp. 28-33.

2. The UK is categorized as modest because the new assemblies for Scotland and Wales were not in place until the end of our period.

3. See the full version of this paper posted as Working Paper #33, School of Policy Studies, Queen's University (www.queensu.ca/sps/WorkingPapers/). Due to a lack of data on social redistribution, Greece, New Zealand, and Portugal are excluded from the welfare state measures.

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Electoral Politics and Abortion

Laurie Shrage

Most progressives would say the abortion debate is intractable because it reflects the huge gap between conservative Christian and secular humanist values. I'd like to offer another theory, one not incompatible with this one, but a supplement to it. The abortion debate is intractable at this time because the two major political parties in the United States exploit this issue to pursue electoral majorities.

Republicans use the abortion issue to forge coalitions with right-wing and fundamentalist Christian voters. Democrats use it to attract women voters. Neither party will risk modifying its rigid position for fear of alienating the constituencies that the abortion issue has helped attract. Opinion surveys over the past thirty years, however, indicate that the majority of Americans support some abortions as well as some restrictions. Most voters, that is, fall between the positions represented by those who refuse to recognize any problems with the legal status quo and those who want to change it radically. According to a national poll in 2000,

> overall support for the landmark Roe vs. Wade decision seems to be softening as Americans adopt a more nuanced view of the circumstances under which abortions should be allowed . . . .Despite the increasing level of discomfort with the high court's ruling—43% of current survey respondents express support for Roe, compared with 56% in 1991—the poll shows continued opposition to a constitutional ban on abortion . . . Nearly two-thirds of respondents say abortions should be illegal after the first three months of pregnancy. While 85% support abortion when a woman's physical health is at risk, the level of support drops to 54% when only her emotional health is at stake. And 66% say they support abortion when the fetus is at risk of an abnormality.[1]

In short, the large majority of voters support the right to choose in the first third of pregnancy and, after that, want access restricted to some cases of hardship, though no one would get this impression from the media or current party politics.

Although the heated atmosphere surrounding abortion politics has been good for Republicans and Democrats, it has not been good for women. Abortion services have become so controversial that women without health insurance, and even many with it, find abortion services inaccessible because of the increasing number of bureaucratic and funding restrictions imposed. Women who live far from major cities face a severe shortage of service providers. Political polarization has not only made abortions inaccessible, it has pushed other important feminist goals to the sidelines: universal child care and preschool, universal health care, paid maternity and parental leave, and better public services for children and adults with special needs.

Keeping the abortion debate heated and polarized doesn't serve women's interests, but it has probably benefited mainstream feminist organizations that grew up around this issue. Rather than trying to forge a public consensus, groups such as NARAL-Pro-Choice America (originally "National Association for the Repeal of Abortion Laws), the Feminist Majority, the National Organization for Women, and Planned Parenthood have taken a "we won't budge" approach. Any compromise on abortion is represented as a complete loss and the retraction of a fragile right recently acquired. By equating democratic compromise with defeat, these organizations sustain the fear that women will lose all access to abortion; and they also attract more members and funds. For

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example, the recent ads of the Pro-Choice Public Education Project feature frightening pictures of back-alley abortion rooms, suggesting what could happen if women lose the right to choose. Other ads argue that if a woman's right to choose can be taken away (it is not even clear what this means in legal terms—for example, overturning *Roe* and then having no states permit abortion for any reason, or something less drastic?), then so can her right to work, vote, and receive an equal education.[2] Women in the United States, according to this campaign, face the same level of threat to their civil rights from religious extremists as women in Iraq and Afghanistan. Rather than create an atmosphere for a calm discussion of the social and legal requirements for "choice," these ads aim to induce panic—a reaction that will shut down debate and make people unwilling to consider a compromise with their opponents. In this respect, these pro-choice ads are as manipulative as pro-life ads that display pre- and post-abortion fetuses.

The Democratic Party has bought into the "all or nothing" approach to abortion promoted by established feminist groups. Allegedly, this approach draws the women voters who often provide the margin of victory to DP candidates. According to the Center for American Women and Politics at Rutgers University, "The gender gap in the 2000 presidential race was of the same magnitude as the 11 percentage point gender gap in 1996. . ." This gap remains when researchers control for race and class. A similarly significant gender gap was evident in Senate, House, and gubernatorial races in 2000.[3] Not all researchers agree on what accounts for the greater allegiance of women (compared to men of their same race and class) to the DP. Some argue that it is due to the economic insecurity of women relative to men and to women voters' greater acceptance of the role of government in helping those in need. Mainstream feminist groups frequently allege that the gap in voting is due, in large part, to a gap in attitudes on social issues, such as abortion. In 1998, the Feminist Majority claimed that the "abortion issue contributed heavily to the Democratic wins. In California, exit polls showed that abortion was the second most important issue in the U.S. Senate race and the third most important issue in the gubernatorial race in which pro-choice Democrat Gray Davis prevailed over anti-choice Dan Lungren. Winning Democrats such as Schumer, Boxer, and Glendening successfully used the abortion issue to distinguish themselves from their anti-choice opponents in the closing days of the campaign."[4] But some surveys indicate that men and women do not differ significantly in their views on abortion, though they do differ on other social issues, such as gun control. Men and women differ on the importance they attach to "women's issues" in casting their votes, which may explain some electoral outcomes.[5]

As if taking their cue from mainstream feminist organizations, DP candidates in recent years have defined themselves as staunchly pro-choice. Most recently, the unlikely presidential candidate Dennis Kucinich flipped from pro-life to pro-choice in opening his bid for the DP nomination, and wrote in a letter to the *Nation* (May 5, 2003), "I believe in upholding the right to choose and will oppose legislation, like the Partial Birth Abortion Ban Act, that restricts the rights guaranteed in Roe." This stance may weaken his appeal in Ohio and tarnish his image as principled and honest, but apparently Kucinich believes that it is necessary to be unquestionably pro-choice and pro-*Roe* to attract Democratic voters. Perhaps he is responding to established feminist groups, which have their greatest influence in the primaries where they can block any candidate who doesn't fully adhere to their key positions.

Despite the fact that survey research shows that men and women do not differ significantly in their views on abortion, and that the majority of American voters support the right to choose in the first trimester but would like to see more restrictions on access in the second, keeping the issues simple and positions polarized benefits both major parties. Abortion has become an easy organizing tool for feminists and the DP and also for anti-feminists and Republicans. And though poor women have not fared well in the post-*Roe* years, the leaders of mainstream feminist groups, like their counterparts in the DP, are generally not poor. For affluent women, reproductive freedom is less contingent on the availability of publicly

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funded health care or child care and more dependent on the removal of formal legal constraints on the medical services they choose to buy. In fact, mainstream feminist organizations risk losing members and money if they push hard for unpopular welfare programs that would serve the interests of poor, working- and middle-class women. Instead, by keeping abortion front and center, they maintain a mutually productive relationship with the Democrats.

The mainstream news media are also complicit in keeping Americans polarized on the abortion issue. In the establishment media, positions that would give neither party an edge, no matter how reasonable, are not seen as important or relevant to the public debate. The prevailing idea of fairness is to give those representing the views of the two opposing parties a public hearing, while all others are shut out. For example, last January, around the thirtieth anniversary of *Roe*, the media reported on the push to overturn *Roe* and the struggle to save it. Arguments from legal scholars, such as Justice Ruth Bader Ginsburg, who are critical of some aspects of *Roe* while still in favor of abortion rights, are rarely heard. With the sides so split and feelings so intense, "*Roe*—in danger" makes for a good story. The only question after that is, who's likely to win—Republicans or Democrats?

Congressional arguments over the controversial mid-pregnancy abortion procedure D&X (intact dilation and extraction) show that the issues raised by abortion do not neatly divide people into two and only two groups. Some pro-choice Democratic senators voted for what became known as the "Partial Birth Abortion Ban Act." Other pro-choice senators would have voted for it, if various amendments had passed—in particular, an exemption to protect a woman's health and a provision that would give women greater access to birth control and early abortions. Yet the ban was approved by the Senate without these amendments (and, at the time of this writing, was approved by the House and is expected to be signed by Bush). Republicans argued that a health exemption would be too vague and therefore would open up a large loophole. Yet it should be possible to find language restricting this late second-trimester procedure to cases of serious hardship (for example, rape, severe fetal abnormality, significant threat to a woman's physical health) that is not too vague for pro-life legislators, and which many pro-choice legislators would support in exchange for removing some funding and other bureaucratic restrictions on abortions in the early stages of pregnancy.

Some people on the left find it hard to imagine that the pro-life camp would compromise, but it divided on the issue of fetal stem cell research, and could well divide again on second-trimester abortions. Some pro-lifers take the "it's in God's hands" approach and oppose abortions even when there is a serious health threat to the mother or a serious fetal abnormality. Others take an "individual responsibility" approach to sex and pregnancy and tend to be more tolerant of late abortions in some hardship cases—rape, fetal abnormality, complications from cancer or diabetes. The latter group would probably find a way to deal with moderates on the pro-choice side. However, although politics typically involves compromise on divisive issues, few Democrats and Republicans are really interested in compromising on the abortion issue. Unfortunately, both parties keep their marginal constituents happy if they don't compromise, even if women are not better off. In the D&X debate, some Democratic senators raised the standard slippery slope argument—one compromise and it's all downhill. Most Republican senators seem to think they will do better electorally by supporting extreme policies, though more moderate Republicans are worried about possible electoral losses should that view prevail.

Indeed, if *Roe* were overturned, the Democrats might draw more voters who care about "women's issues," while Republicans would land an important victory and solidify their political base. So for strategic reasons, neither party is interested in introducing moderate policies, which seem to have no electoral value. In the meantime, many women and many feminist goals are shortchanged.

To turn this around, feminist organizations need to realize that, on the abortion question, they have become pawns of larger political

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forces in this country. By continuing to represent the issues in terms of "*Roe* or nothing," feminist organizations avoid facing the fact that the *Roe* decision was problematic in some ways and has failed to advance women's struggle for reproductive rights. Cass Sunstein, a liberal legal scholar who defends abortion rights, puts it this way:

> It seems at least reasonable to think that the *Roe* decision prematurely committed the nation to a principle toward which it was in any case steadily moving, and that the premature judicial decision had a range of harmful consequences. These included the creation of the Moral Majority, the death of the Equal Rights Amendment, the galvanizing of general opposition to the women's movement, the identification of that movement with the single issue of abortion, the dampening of desirable political activity by women, and the general transformation of the political landscape in a way deeply damaging to women's interest.[6]

Sunstein reminds us that many of the "pro-life" groups with which we're now all too familiar were launched after *Roe*, in the intense reaction to the Court's imposition of twenty-eight weeks of "abortion on demand" on the entire country (fetal "viability," the Court's novel criterion for delimiting the period of unrestricted access, was understood in 1973 to occur around twenty-eight weeks; today it is reached in many hospitals around twenty-four weeks). Before *Roe*, Democrats and progressives were divided between those advocating the reform of existing state statutes criminalizing abortion and those advocating the repeal of all abortion statutes. *Roe* invalidated abortion laws in all states, essentially handing a victory to the repeal forces. After *Roe*, the reform movement retreated and the pro-choice movement rose up in response to the pro-life movement.[7]

It's difficult for progressives to challenge groups such as NARAL-Pro-Choice America, the Pro-Choice Public Education Campaign (an umbrella organization of feminist groups whose slogan is "it's pro-choice or no choice"), and Planned Parenthood (which has launched the "Save Roe" campaign). To criticize the strategies of these groups could play into the hands of extreme right-wing groups that oppose women's access to abortion entirely. Indeed, I would not criticize these groups publicly, if they would permit open debate within their organizations over alternative strategies for winning reproductive freedom for the majority of women. Raising questions about *Roe* in mainstream feminist groups is considered heretical. The reasoning seems to go like this: if you question the need to uphold every part of *Roe* then you may not be pro-choice; and if you are not pro-choice you probably oppose abortion; and if you oppose abortion, then you're not really a feminist, so your view can be dismissed. These groups have spent so many years defending *Roe* against criticisms from the right that they have difficulty understanding criticism from the left. Yet their official line on the abortion question is basically a libertarian one—the less the government has to do with women's reproductive lives the better. But this position does not serve well the interests of women who rely on publicly supported health care programs. When I have had opportunities to engage members of these groups—at conferences, public talks, on my campus, and years ago when I was active in NOW—I find that most activists have accepted a set of unchallenged and unchallengeable dogmas equating *Roe*, choice, and abortion rights. Yet, the easy acceptance of these dogmas reflects an extremely short historical memory on the abortion question. It seems especially important not to forget the reform statutes that won broad public support via the democratic legislative process in a number of states in the decade leading up to *Roe*. Given that *Roe* has not brought closure to the abortion debate, nor has it made safe abortion available to the largest number of women, should we not try to imagine alternative strategies?

In particular, what alternatives might we pursue? First, if the Court takes another abortion case (which it probably will soon, given the approval of the federal ban on D&X and the expected legal challenges), there are various options available to it. The justices could reaffirm the basic doctrines of *Roe*, as they did in *Stenberg v. Carhart* (2000), striking down the federal ban as unconstitutional for its failure to allow exceptions to preserve a woman's health. This is the outcome that the

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pro-choice forces would prefer. The problem with this is that it leaves the country polarized around the issue of nontherapeutic late second-trimester abortions. The Court could also uphold the federal ban on D&X, departing from *Roe* and *Carhart*, on the basis of the government's interest in protecting fetal life, even before the stage of viability. This is the outcome that pro-choice groups fear, and rightly so, because the ban includes no exceptions to preserve a woman's health (though it does permit D&X abortions to preserve a woman's life). There is an intermediate option here, one that could be acceptable to reasonable people on both sides. The Court could strike down the ban for its failure to make exceptions in hardship cases and then spell out carefully what would count as a "hardship." The large majority of countries in the world in which abortion is legal do this in regard to second trimester abortions (some even for first trimester abortions). That is, after a period of unrestricted access (usually up to the end of the first trimester), most countries introduce restrictions of one sort or another. Some permit access beyond the initial period for socio-economic hardships (for example, incest, rape, and indigence); some permit access for mental health reasons, some only for physical health reasons, and some only for serious fetal abnormalities. One possible compromise is to allow abortions for socio-economic and mental health reasons up to the middle of the second trimester and for physical health reasons and serious fetal abnormalities after that point. At the very least, feminists should be considering these legal alternatives, while the Court teeters in the balance.

Pro-choice advocates oppose all such compromises, arguing that they would give doctors and hospitals too much control over decisions that should be made by women. Yet, thirty years after *Roe*, state legislators, with the broad support of their constituents, have restricted abortion through funding cuts, waiting periods, mandatory counseling, and other measures that have shifted power to the state bureaucracy. It now seems clear that poor and young women would do better with a system that empowers doctors to some degree rather than state bureaucrats (and given that abortion is a medical procedure, there is some justification for giving doctors a role in the decision). Another reason pro-choice Democrats oppose modifying the "abortion on demand until viability" standard is that it would force them to acknowledge some unpleasant truths about D&X abortions. Keeping abortions unrestricted until after viability and then allowing exceptions for broad health reasons, including mental health, avoids their having to endorse abortions for basically eugenic reasons. That is, it's probably safer politically to approve abortions aimed at preserving a woman's mental health than those aimed at destroying a Down Syndrome fetus. A few Democrats alluded to the eugenic aspects of D&X abortion in the congressional debates, but this hot potato was quickly dropped as Democrats tried to achieve the same ends by different means. Although their political calculation may be correct, it is dishonest and dangerous. If D&X abortions are primarily used for eugenic purposes, then both feminists and the public need to debate the acceptability of D&X in cases of fetal abnormalities and the possible alternatives.

Another compromise the Court and legislators should consider would be to require public and private health insurers to cover contraception and abortion services in exchange for new restrictions on second-trimester abortions. The Court might argue that if women had both a greater ability to avoid getting pregnant plus unrestricted access to first-trimester abortions, then restricting second-trimester nontherapeutic abortions would not too drastically limit their rights to privacy and equal protection. State restrictions on second-trimester abortion would be constitutional only if states, through the regulation of insurance and drug companies and the development of social welfare programs, guaranteed that women had access to adequate reproductive health care. Moreover, many D&X abortions would be avoided if the government would require health insurers to permit women to choose CVS (chorionic villus sampling) over amniocentesis. CVS can be performed around ten to twelve weeks, while amniocentesis cannot be performed until fifteen to eighteen weeks, with results

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available around two weeks later.

In his initial draft of the majority opinion in *Roe*, Justice Harry Blackmun proposed guidelines that would have permitted (though not required) states to restrict nontherapeutic abortions after a twelve-week unrestricted period, and that would have allowed states to decide which hardship exceptions to permit. Blackmun thought that these guidelines would make the Court appear less activist and allow the states to work out some of the most difficult aspects of the abortion issue, through a democratic political process involving negotiation among groups. Blackmun's guidelines were essentially similar to those proposed by the American Bar Association a year earlier. After circulating this draft, he was persuaded by his colleagues on the Court to move the cutoff for unrestricted abortion to the stage of viability. Thirty years after *Roe*, we can see that this was probably a mistake. Though the Court thought the viability cutoff would gain broad public acceptance, it was wrong. In thirty years, public opinion has not changed very much, with polls still showing that the majority of Americans are tolerant of abortion in the first third of pregnancy and significantly less so after this point. Unfortunately, *Roe* allowed feminists to avoid the "desirable political activity" (to borrow Sunstein's phrase) of working at the state level to win greater tolerance for various hardship exceptions by educating the public about women's need for abortion in different circumstances. And now we may pay for this avoidance due to the considerable success of the pro-life movement in producing greater grassroots intolerance of abortion.

I would like to think that positive political change on the abortion issue in the United States would come from feminist reproductive rights groups, but I realized several years ago that their leaders were unwilling to jeopardize their power and influence by supporting the issues of poor women. Feminists are not the only progressive activists to splinter when they are offered a real piece of the action and accept it on regressive terms. Many academic feminists bemoan the chasm that has grown between women's studies scholars and mainstream feminist groups, and we blame ourselves for focusing too much on theory and not enough on practice. Although this may be part of the problem, it's not the whole story. The chasm that exists is partly due to the rigidity of intellectual views that limits many established feminist organizations. It is more likely that positive change on the abortion issue could come from within the DP, as it sees the need to reinvent itself. Progressive Democratic candidates who are finding that they can build a broad coalition of voters by addressing universal health care, environmental protection, and international peace and justice issues, may also find that a compromise on abortion policies could serve to unite different groups of voters—for example, liberal Catholics and Protestants and progressive women. In addition, positive political change may also come from international feminist organizations in which women from the South are gaining a voice and redefining feminist agendas. Groups such as Development Alternatives with Women for a New Era (DAWN),[8] are reconceptualizing demands for reproductive rights to include political, economic, and sexual rights in ways that would protect the interests of poor women and sexual dissidents. Although international groups seem to have little influence on US policy at the moment, perhaps groups such as DAWN can persuade U.S. feminists to move beyond polarizing electoral politics in defining their agendas. ●

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1. Alissa J. Rubin, "Americans Narrowing Support for Abortions," *Los Angeles Times*, June 18, 2000. For a discussion of poll data from thirty years ago, see Judith Blake, "The Abortion Decisions: Judicial Review and Public Opinion," in *Abortion : New Directions for Policy Studies*, ed. Edward Manier, William Lu, and David Solomon, (University of Notre Dame Press, 1977), pp. 51-82. Clyde Wilcox and Julia Riches argue that public attitudes on abortion are morally

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nuanced and take into account the gestational age of the fetus and the circumstances of the woman. See, "Pills in the Public's Mind: RU486 and the Framing of the Abortion Issue" (*Women & Politics* 24:3, 2003).

2. The ads of the Pro-choice Public Education Project are online at: http://www.protectchoice.org/media.htm

3. See http://www.cawp.rutgers.edu/facts/elections/gg2000.html

4. See www.feminist.org/news/pressstory.asp?id=4540. See also, www.feministcampus.org/sam/sam8_gendergap.asp

5. See, for example, http://abcnews.go.com/sections/politics/DailyNews/gendergap000414.html

6. Cass Sunstein, "Homosexuality and the Constitution," in *Sex, Preference, and Family*, ed. David Estland and Martha Nussbaum (Oxford University Press, 1997), p. 223.

7. See Kathy Rudy, *Beyond Pro-Life and Pro-Choice: Moral Diversity in the Abortion Debate* (Beacon Press, 1996), p. 74.

8. See their website at: http://www.dawn.org.fj/

Jennifer K. Brown

At first glance, Laurie Shrage seems to be issuing a call for moderation on all sides of the abortion debate. She makes a claim that the often vacuous posturing endemic to party politics has primed us to take at face value: real women's interests are being sacrificed to the fundraising and vote-getting needs of the Democratic and Republican parties. Shrage asserts that "for strategic reasons, neither party is interested in introducing moderate policies, which seem to have no electoral value. In the meantime, many women and feminist goals are shortchanged."

But that is at first glance. A closer look reveals an argument that does not withstand scrutiny for one simple reason: the right of the pregnant woman to decide for herself whether to continue her pregnancy has already been deeply, deeply compromised. Although Shrage dangles the tantalizing prospect of a "just right" balance between abortion availability and restrictions that will end the debate and allow us all to focus on other issues, she offers no principled basis for achieving it. The last thirty years have proven over and over again that "compromise" on the abortion issue is a one-way street, all compromises to date having restricted rather than expanded the possibility of personal decision-making in this realm. Nothing in Shrage's argument suggests a different outcome.

Shrage's insistence that Democrats and Republicans refuse to compromise on abortion is utterly belied by the heavy restrictions on access to abortion that have already been enacted all over the country. Who is drafting these restrictions, passing them through committees, bringing them to floor debates, voting for them, campaigning on them, and signing them, if not Democrats and Republicans? In short, her claim that the major parties resist compromise on abortion is palpably wrong.

To the extent that Shrage acknowledges the whole panoply of "funding cuts, waiting periods, mandatory counseling, and other measures" that particularly limit abortion access for poor and young women, she places blame for these restrictions not on the proponents of "compromise," but on the "[p]olitical polarization" that she claims is preventing compromise. The problem for Shrage is that whatever her sympathy for the women targeted by these restrictions, she clearly believes more (though perhaps different) compromises are in order. Thus, she deflects attention from the avidly compromising politicians that crowd our legislatures to that old bugaboo, the "middle-class women's movement" (my words, not hers). Shrage asserts that "poor women have not fared well in the post-*Roe* years," and then helpfully reminds us that "the leaders of mainstream feminist groups, like their counterparts in the Democratic Party, are generally not poor," thereby implying that coziness between mainstream feminists and the Democratic Party has somehow invited these restrictions or, at least, allowed them to flourish.

This claim, too, clashes with reality. When I got involved with my local chapter of the National Organization for Women in 1980, I was given a stack of postcards addressed to state legislators urging them to keep Medicaid funding for abortion and went out on street corners to collect signatures. Did I call out,

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"Keep abortion safe and legal" to get people to sign the cards—the kind of alarmist, polarizing tactic Shrage criticizes? Absolutely! I had two reasons. First, in my view and NOW's, abortion couldn't be called "safe and legal" unless it was an actual option for any pregnant woman, and Medicaid funding was necessary to make that so. Second, I hoped that characterizing funding restrictions as a slippery slope toward a ban would galvanize opposition from the non-poor public, which might otherwise ignore the fate of "other women's" rights. Which way would Shrage have it, that sounding the alarm on abortion restrictions that affect just one portion of the population is "polarizing" and therefore contributes to enactment of more restrictions or that not sounding the alarm is a sellout by women's organizations? In truth, no one *but* mainstream feminists lobbies against or brings legal challenges to restrictions such as those Shrage describes; and, moreover, mainstream feminists are leaders both in promoting child care and in replacing punitive welfare policies with measures to promote women's independence.

Shrage's discussion of the congressional debate over intact dilation and extraction, or D&X, abortion, muddies the issues. Contrary to her suggestion, the D&X debate is not about prohibiting late second-trimester abortion. Moreover, the D&X debate concerns pre-viability abortions only, as post-viability abortions (and even late pre-viability ones) are virtually unavailable except in medical emergencies. Rather, the entire D&X debate is about banning a particular abortion *method*, leaving other methods available for the same abortions (at least its sponsors claim only that limited intent). This matters, because it raises an important question: how could the U.S. Congress possibly be competent to choose one medical procedure over another for the same operation? Before Shrage offers a D&X ban as a good trade for lifting some restrictions on earlier abortions, she should answer this question. She should also explain what mechanism she would invent to make such a compromise stick past the legislative session in which it was enacted.

Shrage takes it as a given that continuing controversy over abortion shows that *Roe v. Wade* was wrong, and she invites us to renounce what has come to be seen as its basic premise: that until the time that the developing fetus could live outside the woman, that is, up to viability, a woman has the right to decide whether to continue her pregnancy. She directs us to the pre-*Roe* loosening of abortion restrictions in some states, without acknowledging that only four states actually gave women the right to choose before *Roe*, while the other "reform" states permitted abortion *only* in cases of threats to the woman's life or health, severe fetal defects, or in cases of rape or incest. Shrage suggests that the Supreme Court or legislatures might require better contraceptive access "in exchange for new restrictions on second-trimester abortions," or that the Court might leave women to make their own decisions on abortion in the first trimester but require us to prove one or another justification for the decision in the second trimester. Yet Shrage fails to offer any principle other than discomfort and public opinion polls for allowing earlier but not later abortions; the answer cannot very well be a "right to life" since whenever the abortion takes place it is the same fetus that ultimately is not born. Shrage's approach also treats the Supreme Court like just another legislature. The two criticisms are related.

What Shrage fails to grasp is that judging is not just another political decision. The Supreme Court's role is to engage in a sometimes very difficult struggle to discern what is right within the legal order we have established for our self-governance. In *Roe*, the Court was challenged to draw its answer to the question of abortion restrictions from a document written without any particularized concern for women and a legal tradition that, until recently, had not considered women to be fully subject to the Constitution's rights and protections. *Roe*'s genius is that it came to terms with a fact that is largely absent from anti-abortion discussions and largely absent from Shrage's argument, as well—that while pregnancy involves a developing human, that developing human is inside, and is in most respects very fundamentally a part of, a developed and autonomous human, a legally recognized subject, a woman. The Court's decision recognized women's autonomy and constitutional dignity.

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By ruling that during the time in pregnancy when the developing human has no capacity for independent life, the woman can act on her body as her body; but when the developing human has a capacity for independent life, the government may restrict abortion, the Court gave women a degree of control over our bodily integrity and our sexuality that thousands of years of culture and politics had largely denied us. The compromise that the Court in fact reached in *Roe* is not unassailable—among the many questions one might ask is why the woman does not maintain her control over her body through her entire pregnancy, especially given that the physical demands of pregnancy are greatest in its final stages, and that there is no comparable situation outside of pregnancy when bodily control is taken away in this manner. But it is not laughable, or anachronistic, or unprincipled. Nor is it any surprise that the backlash against this ruling has been profound and protracted, and will continue to be. Just what would further compromise put at stake? ●

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Rosalind P. Petchesky

Why does the abortion debate refuse to go away? Why, thirty years after *Roe* v. *Wade* was supposed to have settled the issue, does it remain the most politically incendiary, polarizing pressure point in U.S. electoral, judicial, and even foreign assistance politics?

Laurie Shrage joins the legions of ethicists, constitutional lawyers, and political scientists who have grappled with this question over the years. The pragmatism she brings to the effort and her candor in seeking some distance from both the right-wing ("pro-life") and mainstream feminist ("pro-choice") dogmas that monopolize public discourse are admirable. But Shrage's argument mistakes symptoms for causes and leaves most of the hardest problems unsolved.

Sounding more like some of my colleagues in American politics than a philosophy professor, Shrage immediately moves the discussion to the level of political parties and opinion polls. She argues that "Republicans use the abortion issue to forge coalitions with right-wing and fundamentalist Christian voters. Democrats use it to attract women voters. Neither party will risk modifying its rigid position for fear of alienating the constituencies that the abortion issue has helped attract." True enough, but hardly surprising. Political parties and politicians use whatever they can to win voters. Large, established organizations focused on lobbying and electoral strategies fear losing funds and adherents if they veer too far from their familiar, single-issue line. But none of this helps to explain *why* the abortion debate continues to define the central difference between the two major parties; or why groups such as the Christian Coalition and the National Right to Life Committee in the case of the Republicans, the Feminist Majority and NARAL in that of the Democrats, continue to win identity as the party's "base." What is it about the all-or-nothing approach to abortion that makes it so intractable?

Similar omissions occur in how Shrage invokes public opinion surveys. She berates both parties, and the "right-to-life" and feminist organizations they respectively try to placate, for failing to recognize the broad middle ground that public opinion data handily offers them. "[T]he majority of American voters," according to the polls Shrage relies on, "support the right to choose in the first trimester but would like to see more restrictions on access in the second."

In the first place, this only tells us how successful the campaign against so-called "partial birth" abortions has been in the past five years in shifting the ground of the debate (indeed, Shrage's article itself is evidence of this success). Opinion polls prior to the late 1990s fo-

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cused on "reasons" for abortion, not on gestational age. Second, such opinion poll responses are notoriously sensitive to the wording of the questions; they reflect a dominant discourse of right and wrong but tell us very little about how people actually negotiate decisions around abortion in everyday life. And even if one believed such responses gave us a compromise that could resolve the abortion controversy (I don't, for reasons stated below), it wouldn't budge those who are actively vocal around abortion politics from what Shrage considers their extremist positions.

What gives abortion its perpetual valence as a signifier with such resonant meanings in American political culture? Without addressing that question, no sensible formula for seeking compromise or "common ground" is likely to work. I do find it alarming that nearly twenty years have passed since I first wrote my book on abortion, yet the political and cultural climate surrounding abortion in the United States remains much the same as it was then.[1] In the midst of two other conservative Republican regimes, I argued that abortion achieves its power in American politics because it's not really about the procedure itself or even the fetus but rather about the contentious relations—especially those of gender, race, sexuality, and maternity—abortion has come to signify. This is peculiarly true in the American context because of the particular historical trajectory in which "abortion rights," more so than any others, became hitched to ideas about liberating women and women's autonomy—a pattern that has not happened similarly in other countries. Reflecting this pattern, I wrote in the 1990 preface to *Abortion and Woman's Choice*:

> Birth control and abortion services, widely available without age or marital restrictions, have helped to make the young, white woman's sexuality visible, thereby undermining historical race and class stereotypes of "nice girls" and "bad girls." The clinic represents the existence of her sexual identity independent of marriage, of paternal authority, perhaps of men; . . . [it] thus becomes a target of white patriarchal wrath.

This is why retreating from *Roe* to a law that restricts abortions after the first trimester is beside the point—because the *stakes* of abortion politics for both sides have more to do with the self-determination of women and girls than they do with the survival of second-trimester fetuses. If saving fetuses, viable or otherwise, were their motive rather than deeply held sexual and gender anxieties, then anti-abortionists would be pounding the pavements for better and more available contraception. If women's health were the only problem necessitating late-second-trimester abortions, then maybe feminist groups would be well advised to seek the sort of accommodation (a federal ban with exceptions for the woman's life, her physical and mental health and "fetal abnormalities") Shrage seems to recommend.

> In fact, only about 3 percent of all abortions in the United States occur after the first trimester, and among these one-third are among teenagers. The reasons have to do with delay because of "the difficulty in arranging for an abortion," fears of stigma, and parental reprisals.[2]

This is about the vicious climate of moral judgment that still surrounds both abortion and teenage women's sexuality; a "moderate" policy of some restrictions "after a period of unrestricted access" would not by itself address the sexual politics of abortion in America in the slightest. Indeed, this "moderate" policy already exists and has been ratified by not only many states but also the U.S. Supreme Court. It consists of restrictions on access of young and poor women, through parental consent and notification requirements; the denial of Medicaid funding for abortions; judicially sanctioned refusal of public hospitals in the majority of U.S. counties to provide any abortions; and now a congressional ban on D&X, which I suspect will eventually succeed with the exceptions for health that Shrage recommends. But none of this "resolves" the debate; it only makes things worse for women, as she remarks.

So is it fair to blame feminist groups or Justice Blackmun's opinion in *Roe* for this state of affairs, when *Roe* has been successively whittled away by restrictions right along? And how do Shrage and Sunstein think even further restrictions on second-trimester abortions should be enforced—through criminal penal-

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ties on doctors and women? That is a messy issue the article evades. While as a feminist I deplore all such legal restrictions, I have never thought they spelled a "slippery slope" that would mean the loss of legal abortion altogether, and here I agree with Shrage that the mainstream feminist campaign mirrors the fear-mongering of its right-wing opponents. Two things make the outlawing of abortion in this country very improbable: first, the gradually but inevitably increasing availability of medical abortion and emergency contraception (a development Shrage ignores); and second, the belief, so deeply rooted in American political culture, in the right of privacy and personal choice in intimate matters. Indeed, this right was the constitutional bulwark of *Roe* and was recently reaffirmed in the Court's historic ruling in *Lawrence v. Texas* concerning lesbian and gay sexual rights.

But "privacy" as a constitutional doctrine is an inadequate guarantor of genuine reproductive and sexual freedom, especially for the poor and very young women most disadvantaged by abortion restrictions. Shrage recognizes this when she suggests her formula for "reform" would work for women "only if states, through the regulation of insurance and drug companies and the development of social welfare programs, guaranteed that women had access to adequate reproductive health care." Ah, but this is a very different argument from the one based on political parties and opinion polls, only it arrives too faintly and too late. I have always maintained that abortion access for all who need it would never be won unless abortion itself, as both a political issue and a medical procedure, is embedded in a much larger political frame that addresses health care, child care, housing, jobs, education, and the whole cluster of social rights and needs that make having wanted and healthy children possible. Moreover, sex education programs and other cultural media that regulate sexuality would have to affirm the varieties of sexual expression across the life-cycle, rather than clinging to an anachronistic heterosexist conjugal mirage that most of the society no longer lives by.

This of course would require a virtual revolution in U.S. politics and a total transformation of the Democratic Party mainstream, one that would make it truly distinguishable from the Republicans. But the Democrats—like the mainstream feminist groups—prefer the individualist notion of "a woman's private choice" to a much more radical and transformative vision of social rights and public obligation. Shrage is correct to cite the politics of DAWN as a model for such a vision; but DAWN's position on abortion is not one of "compromise" but of women's and girls' empowerment: to make abortion legal and safe for all women in the many countries where it still isn't and to provide the social conditions under which women will no longer pay for abortions with their lives or health, their rent money, or their dignity.[3] ●

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1. *Abortion and Woman's Choice: The State, Sexuality and Reproductive Freedom*, 1st ed. (Longman, 1984; 2d revised ed., Northeastern University: Boston, 1990).

2. Rosalind Petchesky and Carole Joffe, "Wayward Women," *Conscience*, Vol. 18, No. 4 (Winter 1997/98).

3. See *DAWN Informs*, Special Supplement on Abortion produced for the World Social Forum, Jan. 2003. www.dawn.org.fj.

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Laurie Shrage Responds

Both Jennifer K. Brown and Rosalind P. Petchesky raise important concerns in their replies to my paper. I will try to sort out where they misunderstand my position and where we just disagree.

Brown states that I take "it as a given that continuing controversy over abortion shows that *Roe v. Wade* was wrong." This is much too simple. *Roe* went wrong in one respect: because the justices thought that the privacy right they invoked would not allow any restriction on abortion, they imported another principle, which is the idea of fetal "viability." Invoking viability reflects an attempt to find a magic line that can demarcate when a woman's right to privacy can be limited by a fetus's rights. Brown suggests that *Roe* was already a compromise, because this line could have, and maybe should have, been drawn at birth.

The problem with a magic-line approach is that it allows a single factor to determine when the fetus's rights take precedence over the woman's: the developmental stage of the fetus. In fact, there are a number of relevant factors: especially whether continuing a pregnancy imposes an unreasonable hardship on the woman. When a pregnancy does impose such a hardship, then the woman's rights should take precedence. Indeed, Brennan, one of the most liberal justices on the Court, worried that allowing states to restrict abortion at fetal viability implied that the woman's rights could be limited, at that stage, without consideration of her health or other hardship factors. He thought the viability idea went against the entire thrust of their opinion.[1] Feminists have worried that "viability" may be a stage reached earlier and earlier, as neonatal technology improves, thus allowing a woman's rights to be further limited.

But Brown sees the viability cutoff for nontherapeutic abortion as *Roe*'s "genius" in coming to terms with the fetus as a developing entity. She alleges that I hold out the possibility of a balanced approach but offer "no principled basis for achieving it." Actually, *Roe* supplied the basic principle: that any restrictions should respect a woman's right to privacy. Whereas Brown approves of the way the *Roe* Court discerned "what is right within the legal order we have established for our self-governance," I hold that the Court allowed for too little self-governance by defining the meaning of privacy in terms of the viability cutoff.

Like Brown, Petchesky seems willing to dismiss democratic debate and public opinion on the abortion issue. She focuses on the manipulability of opinion data and of public opinion itself. I agree with Petchesky that earlier opinion polls often "focused on the 'reasons' for abortion, not on gestational age." But what these polls often showed (a point Kristin Luker has made) is that the public is sympathetic to abortions women "need," not ones they "choose." In other words, the public approves abortions for therapeutic reasons and is less approving when such reasons are absent. Like Petchesky, I don't think the general public is necessarily right about when women need abortions. But we live in a democracy, where public opinion counts even when it is wrong or manipulated. Feminists should pay attention to public opinion and try to engage and influence it.

Petchesky thinks, like Brown, that I am unfairly blaming *Roe* for the current state of affairs over abortion. Why propose new restrictions in the second trimester when second-trimester abortions are barely accessible anyway? But I am not simply proposing new restrictions. I am proposing that obstacles to abortion based on age or ability to pay be removed, and I am willing to compromise on access to nontherapeutic second-trimester abortions in return for removing these obstacles and giving young and poor women access to abortion in the first trimester (public health insurance, educational outreach, and so on). Many such women seek second-trimester abortions now only because they were unable to obtain them earlier. Democratic political compromise is one avenue for bringing some abortion funding back. If the abortions that the majority of the public sympathize with—the ones women "need"—are also the ones that are legal, then perhaps citizens will be more willing to pay for

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them. We can also try to broaden the public's sympathies through grassroots efforts to educate the public about what women "need."

Petchesky, like many who advocated the repeal of all abortion laws in the past, deplores any legal restrictions on abortion, even in the second and perhaps the third trimesters, that are enforced "through criminal penalties on doctors and women." But Petchesky is conflating two things, restrictions on abortion and the enforcement of those restrictions. The government can enforce restrictions without resorting to criminal penalties, by promoting independent professional peer review of doctors, for example, with sanctions for doctors who perform questionable or quasi-legal medical procedures.

Given the obstacles already faced by women who seek abortions, Petchesky suggests that the focus should be on women's empowerment, not on second-trimester restrictions. She doesn't think that abortion opponents really care about saving fetuses anyway; their motives involve "deeply held sexual and gender anxieties." This attribution of motives aims at discrediting the arguments of anyone who wishes to see more restrictive abortion laws. By contrast, I think that we need to take our opponents at their word and argue with the reasons they give. Many of them simply oppose taking human life, even fetal human life. Those who favor unrestricted abortion need to defend the taking of fetal life, not avoid the issue by ad hominem attacks. In any case, some of those who defend the taking of fetal life may support restrictions, in the third and second trimesters, say, just as those who oppose it may support some exceptions. Therefore, I disagree with Petchesky that second-trimester restrictions are "beside the point."

I don't doubt that issues of gender, sexuality, and especially religious authority, have shaped the abortion debate, but Petchesky ignores how forcing social change without building a consensus can polarize people around precisely those issues and lead to organized resistance. This is the point Sunstein seems to be making; he does not necessarily support my compromise proposals, as Petchesky assumes. So, although I agree that we need to analyze and explain the potency of this issue, my analysis includes the legal and political context of *Roe*. Moreover, even if the public's initial reaction to *Roe* had more to do with the quickly changing norms of gender and sexuality and less with the practice of feticide, the question of feticide has been forcefully raised by abortion opponents for thirty years and needs to be addressed, not dismissed as disguised misogyny.

Finally, I agree with Petchesky that we should promote women's empowerment; women need substantive rights (to abortion funding and comprehensive health care), not just a right to privacy. She argues that nothing short of a "virtual revolution in U.S. politics and a total transformation of the Democratic Party mainstream" will provide women with these rights. But how are we going to effect this transformation, if not through democratic debate and compromise, through making small and large gains? I'm not willing to wait for a revolution, virtual or otherwise.

Brown, too, ignores how the *Roe* decision (and especially the viability cutoff) is a source of divisiveness on abortion. *Roe* forced people to endorse one extreme (all nontherapeutic abortions are permitted until viability, when feticide is, in principle, avoidable) or the other (no nontherapeutic abortions are legal), with no room left for the majority who hold the views expressed in the opinion surveys. Brown's discussion of the D&X ban, in particular, demonstrates the unwillingness of the pro-choice camp to consider how some aspects of *Roe* have fed the abortion controversy. For example, Brown contends that the D&X debate is about banning a particular procedure and that my discussion "muddies the issues." But her discussion ignores what makes this particular abortion procedure controversial: that it is used in mid-pregnancy, and sometimes for abortions women do not "need" for medical or other hardships—abortions that *Roe* in principle permits. Brown is right that the D&X ban, as it was written, would probably allow other second-trimester abortion procedures to be used, such as D&E (dilation and evacuation).[2] And I agree with her that Congress should not decide which medical procedure is used for abortions; a woman and her

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doctor should be able to decide which procedure is safest (usually D&X). My discussion of the D&X debate was not meant to support this particular bill, but to show that the public doesn't neatly divide into those who are pro-choice and those who are pro-life. And it's not a surprise that abortion opponents are targeting a second-trimester procedure, when the public is less approving of abortions. If the D&X ban holds up, a more comprehensive ban on second-trimester abortion will almost certainly be the next step. That's why abortion rights proponents have to think hard about why there is public support for bans on D&X and then try to formulate policies that might win public support.

In sum, my main difference with the two respondents is that I do not think that people who oppose second-trimester nontherapeutic abortions are extremists. Therefore I favor democratic dialogue and compromise on the abortion question, so that all sides get some important concessions. This is what has happened in the large majority of countries that have legalized abortion. In most such countries, abortion laws were formulated by legislatures rather than courts. The laws typically permit therapeutic abortion and typically cut off unrestricted abortion around the end of the first trimester.[3] By contrast, Brown and Petchesky seem to be holding out for total revolution or judicial victory. Their approach only sustains and intensifies the abortion fight, accomplishing little for the majority of women who have felt the brunt of public resistance to our current policies. ●

[1] See, memo from Brennan to Blackmun on December 13, 1972 in the Library of Congress. My copy was provided to me by Jane DeHart.

[2] Abortion opponents have no reason to oppose D&X more than D&E. One procedure destroys the fetus by a craniotomy, the other by dismemberment. But because, in D&X, the fetus's skull is collapsed after pulling it through the cervix, rather than inside the uterus, abortion opponents have used the "partial birth" argument to legally challenge it.

[3] *Abortion Policies: A Global Review*, Volumes 1, 2, & 3, U.N. Population Division (New York: United Nations, 1992, 1993, 1995). This report was updated in 2002, see www.un.org/esa/population/publications/abortion/index.htm

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Listening with the Third Ear

Echoes from Ground Zero

Gene Ray

THE PREEMPTIVE WAR in Iraq is over, and the Bush doctrine has been vindicated. Or has it? The attacks of September 11, 2001, and the Bush government's "War on Terror" have both united and divided Americans. And as readers of this journal know, the doctrine of preemptive attack has even deepened splits within the dissenting left. It is not yet clear which disputed criteria—which ethical, political, and legal languages—will win control over the evaluation of the new intervention and its consequences. But the widest split of all is the one that has opened up between the United States and the rest of the world.

September 11 changed the political landscape. Everyone agrees on that. The arguments are about what that change really consists in. For Mitchell Cohen, it has to do with the gravity of global threats and our awareness of them: "The threat of terror is real. Anyone who scoffs at it will lose moral and political credibility—and ought to." (*Dissent*, Winter 2003) Parts of the left and of the peace movement have been denigrated or dismissed in these pages by contributors advancing some version of this argument.

Although I think I agree with Cohen's claim, I cannot do so without directing some critical questions to its formulation. For whom is "terror" a real threat? How must one acknowledge the "reality" of that threat? In whose eyes, exactly, do scoffers lose "credibility"? I know that Cohen can define these terms coherently and has deployed them carefully and responsibly, in complex and cogent arguments. But I cannot help thinking that his position on intervention in Iraq, as well as a great deal of the debate in these pages, is caught in a post–9/11 American psychology of fear. It may have credibility in America, but from an internationalist perspective, it lacks a necessary distance.

There is an implicit "we" in Cohen's claim and in these pages, and this "we" marks the point at which self-critique stops. The usually unacknowledged "we" is that of "we Americans." It is not merely a matter of recurring calls for "leftist patriotism" on the model of the Second World War or condemnations, subtle or not, of "anti-Americanism." It seems rather to mark a limit imposed on internationalist premises: a limit on the ideas of universal justice and solidarity. I don't claim that every contributor to these pages shares this limiting "we," or that those who do share it do so to the same degree. But it is legible in every recent issue, and I ask my fellow leftists to consider it as a possible problem.

The threat of terror is real. But it was not the material reality that was changed by September 11, so much as a shared (U.S.) perception of existing threats that then itself became a new (U.S.) political reality. That political reality is a constraining one for U.S. politics. And it will have immense consequences for the rest of world. That, I take it, is what Cohen refers to by "political credibility." His claim also includes a notion of "moral credibility" that appeals not to the constraints of particular perceptions but to universal norms and standards. Cohen does distinguish between the two; but I wonder if, at the level of psychology and shared identity, they are not subtly conflated after all.

I am aware of the problems involved in invoking "psychology" and "identity" as categories here. As soon as they come into play, we've left behind the orders of logical and empirical proof, in which propositions can be invalidated in any strict sense. Nevertheless, psychology and identity refer to real forces—forces that are often behind the kinds of conflict in which the di-

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lemmas of humanitarian intervention, debated so lucidly in these pages, emerge most starkly.

The tradition of enlightenment for which this journal stands is premised on the possibility of progressive self-awareness and liberation from forms of prejudice. Following Freud, enlightenment is interminable analysis: the unending self-critical labor of "working through" narcissistic wounds and fantasies and a continual turning, through this effort of mourning, toward others and the world. "Reality testing" and the revision of identity—individual and collective—are irreducible aspects of this process. Wounds, traumas, psychic scars: these mark points of repression, where inassimilable experience, painful knowledge, and threats to phantasmic or imaginary investments are forced back from consciousness. Enlightenment, understood in this way, is impossible until wounds are acknowledged and feelings fully articulated.

I WANT TO SUGGEST that the United States, as nation and a people, was traumatized by the attacks of September 11, but not quite in the way most Americans believe.

"Official" categories imposed on public discourse about 9/11 served to simplify the complex background of the attacks and to block any critical reflection about their causes. The attacks were the work of "evildoers," and evil is a sufficient cause unto itself. Why did they do it? Because they are evil. More than crimes, the attacks were exceptional "acts of war" that demanded an exceptional response. A cooperative law enforcement or juridical response would not, by these terms, suffice. The response could only be military: "Infinite Justice." Anyone who questioned this response would be categorized as an enemy: "Whoever is not with us is with the terrorists."

What is missing in the published dissections of this opportunistic rhetoric is an appreciation for the wound and for the powerful feelings of fear and anger that it set loose. The wound has two dimensions. First, it punctured an assumption of American invulnerability and revealed a real limit to U.S. power: not even a superpower can protect its citizens from every kind of threat, even at home. Second, it punctured a cherished collective self-image. Americans have persisted in imagining themselves as the most virtuous and generous nation on earth, and yet the atrocious morning of September 11 revealed them to be targets of intense hatred. The attacks did not just strike the symbols of U.S. power; they also struck the ground of U.S. identity. Even now, there is much pain, confusion, silence, depression, rage, and anxiety loose in the land. Even now, Americans remain, psychologically, in a very fragile state. Fear and anger are the dominant emotions, and they translate into bad, unenlightened politics.

There was, however, a moment in the weeks after the attacks in which a more complex response came to light. Spontaneously, Americans began to refer to the destroyed site of the World Trade Center in Manhattan as "ground zero." Whoever first used the term in this context, its dissemination and acceptance was rapid: the *New York Times* had begun using the term by September 16. Every kind of discourse, popular and official, took up the term, uncritically and without reservation.

To this day, the ambivalent post–9/11 meanings of this term have not been adequately remarked or analyzed. The term is technical in origin. It designates the point on the ground directly below a nuclear explosion. It was first used, according to the Oxford English Dictionary, in 1946, in a *New York Times* report on the damage inflicted on the city of Hiroshima. These origins are no secret. "Ground zero" and its links to Hiroshima recur quite often in histories, novels, and films. The notorious "Unit Four" of the censored 1995 Enola Gay exhibition at the National Air and Space Museum, which marked the fiftieth anniversary of the dropping of the bomb, and which would have exposed millions of Americans to devastating photographs of the civilian victims of Hiroshima, was called "Ground Zero." The term is an uncomfortable part of American public culture.

Something extremely profound and important, then, was trying to "say itself" in the quick acceptance of this term after September 11. The first thing it says is how deeply Americans were hurt. The attacks hurt us as deeply, the term says, as the atomic bomb hurt the people of Hiroshima. The reference to an exemplary community of victims insisted that American pain and shock be recognized as terrible. This

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would be the manifest meaning of the term "ground zero" in this context.

But it says something more. For Americans insisted, through the term, in comparing themselves to a specific group of victims—but not to the most exemplary group: the victims of Nazi genocide. No, they compared themselves to the Japanese of Hiroshima. As a way of indicating the depth of their pain, they chose the people on whom the United States used the first nuclear bomb.

The unconscious meaning of "ground zero" gradually becomes clear. It acknowledges what the United States as a nation has long resisted acknowledging consciously and officially. What it "says" is that Americans know that Hiroshima and Nagasaki were terrible crimes. They knew, even as they suddenly and horribly found themselves the target of an atrocious attack, that their own government had, in their name, committed a great atrocity.

A momentous revelation: in the confusion of that traumatic disturbance, Americans found and grabbed tightly onto this term from the past, in order to claim for themselves a status of victimhood that would express the gravity of the injury. And yet they chose a term that could not say otherwise than that they too, in recent history, had been terrorists. For the attacks on the cities of Hiroshima and Nagasaki were, even in the context of war, a quantum leap in the terror bombing of civilians.

It will not be necessary to rehearse here the long repression, in American memory, of Hiroshima, or the historians' debate about the official motives behind the decision to use the bomb, in order to recognize that this displacement of ground zero from Japan to Manhattan is a rejection of the gross simplifications of official post–9/11 rhetoric. For "Hiroshima" is contested ground, a key term and irreducible point of reference for conflicting formations of American identity—for both the official identity, based on a notion of American moral exceptionalism, and alternatives to that identity, based on the critical processing of the past.

So the terms of our public discourse unwittingly revealed the depth of American ambivalence and self-conflict. Unconsciously, Americans understand that the official image of their nation is based on a fantasy of special virtue that will not stand up to reality. But at the level of identity, post–9/11 American fear for personal safety merges with the fear of confronting that fantasy. It makes a great difference if a people thinks of itself as capable, like everyone else, of making terrible ethical mistakes, or if, instead, it thinks of itself as morally qualified, in a unique and exceptional way, to lead the world.

The weeks following 9/11 were indeed weeks of decision: history had intervened in the normal course of American life, demanding a response but also opening up an opportunity for national reflection. The tragedy of the attacks was also an invitation to work through a shared past: to let go of and begin to mourn a fantasy of exception that was flattering but delusional, and, in accepting that burden and that task, to adjust the way the United States represents itself and acts in the world. This is what our friends in "old" Europe and the world keep waiting and hoping for.

WHAT THEY GOT instead was, for example, continued resistance to the International Criminal Court and demands for special immunity for U.S. nationals. The underlying logic and its link to identity is perfectly clear. Premise one: Americans are good. Premise two: the good do not commit gross violations of human rights. Conclusion: Americans cannot possibly be guilty of crimes against humanity. Conclusion: indictments of Americans can only be "politically motivated."

Of course, it was too much to hope for that the unconscious revelation of the term "ground zero" could become fully conscious while the wound of 9/11 was still fresh. Widespread fear and anger made it easy for the Bush government to pursue a politics of simplification and moral exceptionalism. This analysis does help us to see, however, that the critical countermemorial project of the American left can only facilely be dismissed as a form of "anti-Americanism." Is it not precisely its insistence on this project of reality testing that so incenses many Americans about the domestic and international peace movement?

Moreover, it seems clear that Americans have not really appreciated—and this point may

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also apply to some contributors to *Dissent*—the extent to which the rest of the world no longer recognizes U.S. moral authority. The broad sympathy extended to Americans after 9/11 has been withdrawn, not because the world "scoffs" at the threat of terror, but because it finds the Bush doctrine of preemptive war an unacceptable threat to an international order of mutual security grounded on a shared rejection of war. The world doesn't trust a government that has thrown away the doctrine of the sovereign equality of all states and given itself permission to attack anyone, anywhere, whom it deems a threat. The world thinks this government has done so not because it was necessary but because it had the power, because it could.

It is for these reasons that I have difficulties reading in these pages passing characterizations of the Second World War as an admirable antifascist struggle that should serve as a model for leftist patriotism and politics. It is not merely that the Bush government has fully exploited the selective American memory of that global conflict, using the "Good War" as a template for the "War on Terror" against the "axis of evil." It is rather that an uncritical perspective on the "Good War" reinforces the myth of American moral exceptionalism and blocks the transition to a more enlightened identity formation.

The Second World War was a just war, but the Allies did not always fight it with just means. The way the United States concluded that war was a disastrous ethical and political failure that destroyed three hundred thousand (mostly civilian) lives in two cities and left the world a legacy of trouble and terror. The United States has never been held accountable for that failure, and it officially refuses to hold itself accountable. Americans need to work through that legacy and their role in it, and critical intellectuals will have to lead that effort. Americans, moreover, should remember and reflect on the fact that Pearl Harbor is a classic example of a preemptive attack.

The official discourse insists that what is at stake, since 9/11, is nothing less than national survival and "our way of life." No one should deny today that violent non-state actors represent a real threat. But we can disagree, I hope, about how far they really threaten U.S. national survival and what to do about them. We are told, in effect, that our choice now is between perpetual preemptive war and "suicide." I think that this official choice lacks credibility; I accept that well-intentioned people can hold such a position, but I can only reject it.

What to do? If not preemption, then what? If nuclear, chemical, and biological weapons are a grave and urgent threat (and they clearly are), then let's stop testing and producing them. Let's make the "strategic choice" to eliminate them, universally and not selectively. That would be a morally and politically "credible" goal, consistent with the vision of "cosmopolitical democracy" advocated in these pages and elsewhere by Daniele Archibugi. In the end, a just global order will have to be grounded in a more equitable and democratic distribution of resources and benefits: although redistribution cannot pacify every hatred, it remains the soundest material basis for mutual security. I cannot see that great project succeeding without a parallel critical project—without the deepening of self-critical enlightenment and the progressive transition to what Juergen Habermas has called "post-traditional identity" or loyalty to shared constitutional principles rather than to race, place, or people. Nowhere is that task more urgent today than in the world's only superpower. Clearly, such a reversal of the current course would not be achievable overnight. But as the analysis of the term "ground zero" indicates, there are at least some grounds for hope. ●

Gene Ray writes about the intersections of ethics, politics, and art and edited *Joseph Beuys: Mapping the Legacy*. He is currently an Alexander von Humboldt Foundation German Chancellor's Scholar and a guest of the Kunst-Werke Institute of Contemporary Art in Berlin.

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Mitchell Cohen Responds

Quotation marks can substitute for political argument. Recall how parts of the pre-postmodern left addressed what they called bourgeois democracy. First, the word democracy was placed in quotes. This signaled that democracy's reality was counterfeit if its origins were bourgeois. Then the subject was changed. Instead of comparing the workings of bourgeois "democratic" government to Europe's *ancien régime* or—cough, cough—to "proletarian democratic dictatorship," instead of discussing how insufficiently representative institutions might be made more representative, conversation was redirected to the ills of capitalism. Now, I think that economic inequalities and social suffering are real, corrode democracy, and should be redressed politically. But I also think that forms of government really matter—for political, not just socio-economic reasons. So I recognize that "bourgeois" democracy, for all its need of amendment, permits the possibility of a decent political regime with social democracy.

Does my discussion of "bourgeois" democracy seem distant from Gene Ray's concerns? Not if his rhetorical strategy replicates the old pattern of argument-by-quotation-marks, albeit in postmodern and Freudian habit. The pattern of Ray's argument suggests to me a problem with its content. He places "reality" and "terror" in quotes. So, too, "credibility," "ground zero," "leftist patriotism," "anti-Americanism," and "we," together with "we Americans." Not in quotes are wound, trauma, psychic scars, my fellow leftists, universal justice, terror bombing when applied to Hiroshima, and notably, unconscious meaning. The quotation marks suggest which words are not truly "grounded."

The result is odd. Ray questions whether we on the left should speak of an American "we," but then recommends that Americans should use the tragedy of 9/11 "to work through a shared past." If the "we" is "we Americans," then he thinks "self-critique" stops, but there seems to be no comparable hazard when he speaks of "my fellow leftists." Well, I belong to many "we's"—a human we, a left we, an American we, a New York we, a Jewish we, a professorial we, a trade union we, a *Dissent* we. By Ray's logic, my capacity for self-criticism must be in multiple arrest. Alas, I hoped that my plural loyalties, because they complicate life, had the opposite effect.

Ray expends much effort discussing "something" that is trying to "say itself" (as he puts it) through the use by Americans of the words "ground zero." I suppose that this stuttering "it" dwells in the unconscious of the non-we. "It" seems to be the memory of Hiroshima, but if so I believe that he is either changing the subject—I thought it was the events of the past two years—or freely associating. Why Hiroshima? Why not Vietnam? Or slavery? Because of the very phrase "ground zero"? As I recall, most Americans, and certainly most people in New York, where I was during and after 9/11, associated the terrible events with Pearl Harbor, not Hiroshima. One can think that bombing Hiroshima (fifty-eight years ago) was wrong while recognizing that the phrase "ground zero" simply indicated the site of a devastating surprise attack, not a repressed "it" needing articulation. Sometimes a "cigar" is just a cigar.

And sometimes "victims" are victims. Ray writes that the tragedy of 9/11 should serve as an invitation to discuss the stains on American history, but he never invites a hard analysis by the left of the declaration of war by Islamic fundamentalists against Americans (and "Crusaders and Jews") and its resultant three thousand deaths. It is a selective invitation list. Why discuss the fundamentalists when you can change the subject to Hiroshima? (Does he think that the Twin Towers would still stand today had Hiroshima not been bombed in 1945?) Ray says he "cannot help thinking" that my position on Iraq was tied to 9/11. Surely he'd think otherwise if he addressed the arguments I made about Iraq. At least one, please, since none concerned 9/11.

But what of Ray's three questions? For whom is "terror" a real threat, he asks? Terror—targeted murder of civilians to attain political

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or military goals—threatens Americans and other people around the globe. We know it is real because three thousand innocents died on 9/11, for example. How to acknowledge this reality? By addressing it for what it is and not by putting it in postmodern quotes. In whose eyes do scoffers lose credibility? In those of American citizens, for starters.

The left has failed to set America's priorities for a long time. It has not persuaded citizens that it would do well in power. Now, a primary responsibility of any government is its citizens' safety. *If* religious fanatics attack them and the left says,

(1) We are not part of your "we," but do let us lead you;

(2) You will be safer only if universal justice resolves all the world's problems (which, we know, are all the fault of your "we" anyway); and

(3) Please engage in national psychotherapy to expiate your unconscious guilt;

then don't be surprised if those citizens turn to the John Ashcrofts of the world. Now, that'll be a boon to internationalism. Not to mention national mental health. ●

MITCHELL COHEN is co-editor of *Dissent* and teaches political theory at Baruch College of the City University of New York.

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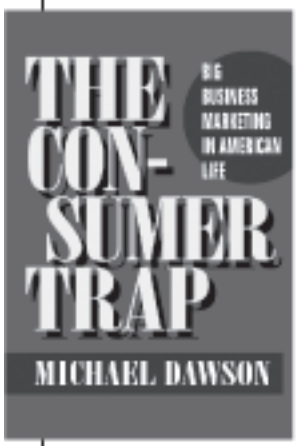

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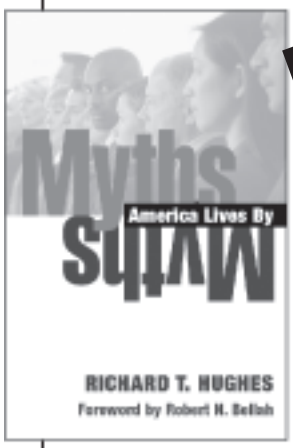

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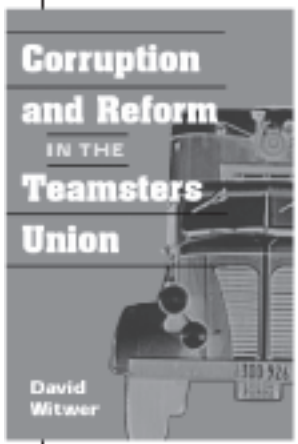

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War and William Shakespeare

Alexander Harrington

THIS PAST WINTER, as the debate over invading Iraq intensified, I received an e-mail announcement for an "antiwar" production of Shakespeare's *Henry V* being staged in Los Angeles. For people who know the play only from Laurence Olivier's Anglo-patriotic, World-War-II-era movie, this may be puzzling. However, it will come as no surprise to those familiar with the play's production and critical history. That *Henry V* can support both patriotic prowar and critical antiwar interpretations has been discussed to a fare-thee-well among Shakespeare critics, scholars, and directors.

Shakespeare's two-sided position can be seen even in a very quick examination of the play. In its first scene, the archbishops of Canterbury and Ely are fretting over a bill about to be passed by Parliament that would strip the church of much of its property. In order to get King Henry to kill the bill, Canterbury plans to offer a big contribution to the king's war chest for an invasion of France. Henry is descended from a French princess and claims that the crown should have passed to his great-grandfather when the last of the French descendents of the royal house died (the crown was given instead to a cousin of the royal family). The French have barred Henry's claim by holding up an ancient Frankish law (the Salic Law) that does not allow inheritance through women. In the next scene, Henry asks Canterbury whether the French argument is legitimate; if it is not, he believes, an invasion of France would be justified. In substance, Canterbury's argument is straightforward: the Salic Law was devised for territory that is now in Germany, not France, and the kings of France themselves have inherited through women. However, this argument is presented in such an absurdly intricate manner that, to an audience hearing it for the first time, it sounds like double-talk. It sounds like double-talk to Henry as well: after Canterbury's long speech, he repeats his question: "May I with right and conscience make this claim?" Canterbury replies, "The sin upon my head, dread sovereign." After exhortations from his nobles, Henry decides to invade.

Shakespeare is ambiguous as to whether Henry's claim is just. On the one hand, the audience knows that Canterbury has an ulterior motive for justifying the claim, and his speech comes across as obfuscation. On the other hand, his arguments are, given the values of dynastic politics, sound.

Later in the play, at a point when a lengthy siege has failed to get the French town of Harfleur to surrender, Henry tells the governor of the town that if the English are forced to continue the siege, he will no longer be able to control his soldiers. When the town falls, "look to see/The blind and bloody soldier with foul hand/Defile the locks of your shrill, shrieking daughters;/Your fathers taken by the silver beards,/and their most reverend heads dashed to the walls;/Your naked infants spitted upon pikes." When the governor surrenders, Henry instructs one of his lords to "use mercy" to the inhabitants. Perhaps Henry's threats were a bluff. Nevertheless, it is morally questionable to threaten rape and murder, the killing of the old, and infanticide—even as a tactic.

As Henry and his troops march from Harfleur to the English-controlled port of Calais, Bardolph, one of Henry's drinking buddies from his wayward youth is arrested and executed for robbing a church. Henry supports the execution and proclaims,

> We would have all such offenders cut off: and we give express charge in our marches through the country there be nothing compelled from the villages, nothing taken but paid for, none of the

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> French upbraided or abused in disdainful language; for when lenity and cruelty play for a kingdom, the gentler gamester is the soonest winner.

The lines recall Henry's repudiation of Falstaff. Here he consents to the death of a friend, but at the same time he insists, like a good king, on the humane and respectful treatment of French civilians.

With Henry's numbers depleted by disease and his soldiers exhausted and weakened, the French strike back, and, near the castle of Agincourt, attack Henry's remaining twelve thousand troops with a force of sixty thousand (a historically accurate figure). Immediately before the battle, Henry rallies his outnumbered troops with the famous "St. Crispin's Day" speech. One would expect that a scene of combat would follow. Instead, Shakespeare gives his audience a comic scene in which Pistol, another crony from Henry's wilder days, extorts ransom from a captured French soldier (Shakespeare has made it clear in *Henry IV, Part I*, that ransom is one of the perks of war). In the next scene, the French nobility decry their shame: they are losing to a smaller and weaker force. They swear to die wreaking havoc. When the French return to the field, Henry panics and orders his men to kill their prisoners—a violation of the rules of war in both medieval and Elizabethan times. The shamefulness of this act is ironically pointed up by the fact that it follows the description of two English knights chivalrously dying in each other's arms. Later, we discover that the French have killed the boys who were guarding the English supplies. A captain says that it is in response to this French atrocity that the king has ordered every man to kill his prisoners. But the audience knows that Henry was unaware of what the French had done when he gave the order. Perhaps this is simply an inconsistency that Shakespeare failed to correct. Or is the captain rationalizing Henry's war crime? Or is Shakespeare deliberately obscuring the issue of right and wrong?

Whatever the answers to these questions, it is important to stress that there are no combat scenes during the battle of Agincourt—a fact often obscured by the insertion of such scenes into movies and some stage productions. Shakespeare's depiction of one of the most significant battles in English history consists of a comic scene about ransom and scenes of one side's going off to commit atrocities (the French) and the other ordering atrocities (the English). Surely there is irony here.

Nonetheless, at the end of the battle, Shakespeare places God squarely on the English side. The English have won against extraordinary odds. The French have lost ten thousand men, the English twenty-nine (historically, the French lost approximately seven thousand, the English no more than five hundred). Shakespeare offers only one explanation for this incredible outcome: it is a miracle. Henry says,

> O God thy arm was here;
> And not to us, but to thy arm alone,
> Ascribe we all! When, without stratagem,
> but in plain shock and even play of battle,
> Was ever known so great and little loss
> On one part and on th' other? Take it, God
> For it is none but thine.

In a mechanical tally of the evidence for a patriotic and a critical interpretation of the play, the critical interpretation probably comes out slightly ahead. So it's not surprising that, in a time of war, the theatre community (which is by and large liberal to left and antimilitarist) would mount productions of the play. But if you rely too much on the textual evidence, you will miss the effect of the play in performance. Shakespeare has given Henry such extraordinary speeches that, in the hands of a skilled actor, he comes across as an irresistibly inspiring and charismatic military leader. If you want to present *Henry V* as an unambiguous antiwar play, you have to fight the power of Henry's speeches.

Indeed, in this summer's Shakespeare in the Park production in New York City directed by Mark Wing-Davy (whose take is, for the most part, antiwar) Liev Schreiber delivered most of the speeches in an extraordinarily controlled manner and seemed to be resisting the rhetorical power of the language that Shakespeare gave him. In an article praising Adrian Noble's 1984 antiwar production at the Royal Shakespeare Company, the critic Chris Fitter describes Noble's staging of Henry's stirring "Once more unto the breach" exhortation to his troops:

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> Harfleur at 3.1 is a smooth, vast wall of gleaming grey steel. . . . . Ascending this height are three parallel scaling ladders, onto the middle of which, Henry throws himself after "Once more unto the breach, dear friends, once more/ or close the wall up with our English dead." As soldiers swarm eagerly up the two flanking ladders, Henry freezes three rungs up, and to the astonishment of the troops now above him, who exchange puzzled glances on their heights, Henry breaks into the lengthy and now redundant grandiloquence of a further thirty-two lines. At his ardent climax, crying "God for Henry [sic], England and St. George!" he throws up his arms in surrender to euphoria and topples stiffly backwards into the arms of Exeter and his "brothers." His troops thus recommence the assault alone, Henry being below in fraternal delirium.

To avoid glorifying Henry and war, Noble had to stage the speech in a way that contradicts the action implied by the text.

Still, Olivier also had to contort the script to make it unambiguously patriotic. He plays up the comedy in Canterbury's Salic Law speech to the point where it obscures what is actually happening in the scene. He also cuts Henry's threats to Harfleur, the execution of Bardolph, and the killing of the prisoners. Kenneth Branagh's brilliant 1989 film, which preserves the play's ambiguity, also cuts the killing of the prisoners. One could speculate that Branagh wanted to play a morally ambiguous, but still heroic Henry, and that including the killing of the prisoners would have tilted the scales too far against Henry for Branagh's comfort.

Henry V is not an isolated case of Shakespeare's moral ambivalence on political questions. It is part of a larger cycle of history plays known as the major tetralogy (*Richard II, Henry IV, Parts 1 & 2,* and *Henry V*). Throughout these plays, Shakespeare resists presenting his audience with clear-cut rights and wrongs. Often characters who behave in a morally distasteful fashion turn out to be effective rulers who serve the greater good of their country.

I want to suggest that it's the moral ambiguity of Shakespeare's history plays that suits the times in which we live—and not their messages, however interpreted by directors on the right or left. Consider as a case in point the left's position on U.S. foreign policy. During the cold war, it was relatively straightforward and unambiguous: the democratic left opposed Soviet communism as a totalitarian abomination, but did not think that opposition to communism justified the U.S. government's support of right-wing dictators such as Chile's Augusto Pinochet or Iran's Mohammad Reza Pahlavi. But now look at the contemporary case of U.S. support for Pervez Musharraf in Pakistan.

It is a bit of a stretch, but Musharraf would make a fine character in a Shakespearean history play. Always ambitious, he led the overthrow of a democratically elected government in a military coup and seized power for himself—and was condemned by the United States for doing that. However, the democratically elected leaders that he replaced were corrupt, and he seems to have enjoyed strong popular support. A short time later, al-Qaeda targeted tens of thousands of civilians in the attacks on the World Trade Center and the Pentagon and succeeded in killing almost three thousand. The United States then put pressure on Musharraf to assist us in overthrowing the Taliban government of neighboring Afghanistan, which was closely allied to al-Qaeda. Musharraf agreed, and the United States entered into an alliance with Pakistan. Because many Pakistanis sympathized with the Muslim radicalism of the Taliban and al-Qaeda, Musharraf lost popular support and took repressive measures to quash his opposition. Now he is no longer a benign despot, and the United States is no longer condemning him; he is a stalwart ally.

What should the left's position be on issues such as U.S. support for Pakistan? Watching *Henry* V won't help us answer questions like that, but it might help us understand why, as with the moral/political questions in the play, there is no easy answer. This is a time for the history plays, not because they are pro-war or antiwar, or favor one king or country over another, but precisely because of their deep ambiguities. Let us hope that new productions of the plays preserve their complexity rather than giving easy answers to the hard questions they raise. ●

Alexander Harrington is the artistic director of the New York-based Eleventh Hour Theatre Company, for which he has directed all the plays in Shakespeare's major tetralogy, including *Henry V*.

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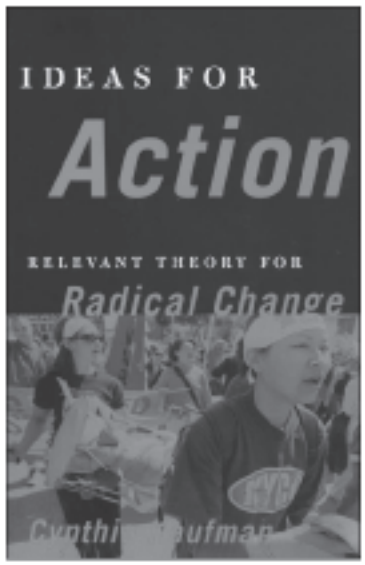

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In Memoriam
Lewis Coser: 1913-2003

Lewis Coser, who died July 8 in Cambridge, Massachusetts, was one of the last of an intellectual generation. This is true in the literal sense that he, along with Irving Howe, Stanley Plastrik, and a small nucleus of others, invented this magazine and put out its first edition in the McCarthy-dominated-America of 1954. More broadly, Lew was a preeminent representative of a social type that has since become something of an endangered species in America—a scholar who was also a public intellectual, a social commentator endowed with both enormous scholarly depth and authentic political passion.

Lew was born in Berlin. His father was a wealthy Jewish industrialist, his mother an upper-class Protestant. These differences seemed to have produced a contentious family—and to have set the stage for a life in which conflict and ambivalence were a leitmotif. Lew upped the ante of contention by embracing radical politics—further roiling his relationship with his father, becoming something of a celebrity in left-wing circles in his early youth, and accordingly having to flee Germany in 1933 to escape the attentions of the Nazis.

He went to Paris, where he seems to have lived from hand to mouth, insecure economically yet immersed in the incredibly rich political and intellectual culture of the inter-war years. I remember his anecdotes of figures like Nicolai Bukharin and Arthur Koestler, Marcel Mauss, and many others. Escaping again from the Germans under the occupation, he made his way at the last possible moment to the United States, where he married Rose Laub, later also active with *Dissent*.

For ten years or so after coming to the United States in 1941, Lew once told me, he supported himself largely as a "left-wing journalist." In the fifties, he enrolled as a graduate student in sociology at Columbia University, taking his Ph.D. at the age of forty-one. By that time, he had already experienced at first hand some of the greatest extremes that twentieth-century history had to offer, and none of that experience was lost on him. He had become what he remained: a socialist in economic matters, a defender of democratic principles in politics, an enemy of conservative and centrist complacency in the face of human suffering and of left-wing apologists for totalitarian practice.

Perhaps it was this extended period of living through history and supporting himself by his freelance talents that forestalled Lew's becoming a conventional academic. Like the other founders of *Dissent*, he always remained a generalist. It was axiomatic to him that to be an intellectual meant developing and proceeding from a coherent worldview, which one would then apply, with imagination and flair, to virtually any subject matter. It was this sense of being a whole thinker, a minister without portfolio, that distinguished him from academic writers who viewed themselves as expert practicioners of circumscribed specialties. Like others of that first generation, he was always ready to "write on demand" for the journal. He would willingly undertake work on a topic that he might never have written about before, but which he would invariably treat in the *Dissent* mode. Like the magazine he helped found, he operated from a vision.

These qualities made a deep impression on me when, as a disoriented Brandeis undergraduate newly arrived from California, I came under his spell. People in Berkeley had told me that he was someone I had to meet when I came to Brandeis, and his reputation was equally strong on that campus. As a teacher of sociology, Lew seemed to have something important to say about everything in the field—

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to have read every author worth reading, to have thought about every question worth considering, to have taken the exact measure of intellectual allies and antagonists, and to have his speech prepared in each case. But this overarching intellectual style didn't stop at the boundaries of the discipline. He had equally vigorous and multifaceted views on aesthetics, literature, philosophy—and of course politics. He was always ready to lay his own position on the line, yet he was not overbearing. Instead, he could speculate about the bases of his own views, and wonder out loud what it would have taken to move him in a different direction. And he was always supportive of efforts by people like me to find our own intellectual way.

Having grown up in the political wastelands of suburban California, during the McCarthy era when no one dared to breathe a political idea to a young person, I found in Lew's worldview everything that my own intellectual and cultural upbringing had lacked. More than anyone else, he was responsible for shaping my own mindset and career directions. It was my extreme good fortune later to become his colleague in the sociology department at Stony Brook, from which he retired in 1987.

By his fifties, Lew had become—I think somewhat to his surprise—an eminent sociologist. He was elected president of the American Sociological Association in 1974, collecting many honors and distinctions before and after. But he always considered himself an intellectual first and a sociologist second. His aim was always to make some sort of comprehensive sense of the human condition—a sense of the best that social life could offer and a hardheaded look at the worst things human beings could do to one another, a vision of possibilities of change for the better and an assessment of the forces weighing for and against those possibilities. Sociology was one particular mode of knowledge that supported those larger tasks. But the kind of writing and thinking he did for *Dissent* was no less basic to his identity.

I think that Lewis Coser, for all his ultimate eminence, always felt himself a marginal man. He was Jewish and non-Jewish; an American and a European; a hardheaded social analyst, committed to rigorous honesty in judgment and deed, and a passionate advocate; a leftist and a critic of the left; a defender of the underdog and something of an elite intellectual mandarin. I do not think he would have traded these marginal identifications and their associated inner tensions for anything. As he himself sometimes suggested, conflict, tension and ambivalence had been so much a part of his life that thriving on them became central to his identity.

All of us who knew him, and everyone associated with *Dissent* at any stage, benefited from these qualities. Often, in the years since he left Stony Brook for Cambridge, I have found myself asking "What would Lew think about this?" or "What issues would Lew see at stake here?" I can't turn to him any more now, but the fact that I keep asking questions of this kind, I owe to him. He was a deep, committed, sophisticated thinker, the best of friends, and a very classy guy.

—James B. Rule

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Reality of "Reform"

Stephen Pimpare

FLAT BROKE WITH CHILDREN:
WOMEN IN THE AGE OF WELFARE REFORM
by Sharon Hays
Oxford University Press, 2003 304 pp $30

SINCE THE PASSAGE of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRA), there has sprung up a cottage industry of studies trying to evaluate the outcome of what New York senator Daniel Patrick Moynihan called "the most regressive and brutal act of social policy since Reconstruction" and Michigan governor John Engler hailed as "the beginning of a new, empowered life for aid recipients." Now, with the long-postponed reauthorization of welfare reform again in the air, we have a formidable array of data by which to evaluate it.

Some studies have tracked the declining, and now rising, welfare caseloads, carefully documenting variation from state to state. Others show the increasing concentration of cases in cities. "Leaver" studies give us estimates of how many former recipients have entered the workforce (40 percent to 60 percent), their average wages (relatively low, often below poverty level, but sometimes above), and their material well-being (some are clearly better off, some poorer). "Cycler" studies measure how many who have left the rolls have returned (perhaps 20 percent, so far), and "stayer" studies describe the characteristics of those who have never left the rolls (generally those with "multiple barriers" to employment—disability, mental illness, few skills, little education). We know what's happened to marriage rates (little) and out-of-wedlock birth rates (still rising, but more slowly). We have data on demand for food at soup kitchens and food pantries, homelessness, and foster care placements (they're all up). Economists have tried to gauge the relative importance of the economy, reform itself, the earned income tax credit, and other factors in driving down the rolls. There has been no clear consensus, but all seem to have been important. Others have tried to calculate the effect on wages and unemployment rates of this new flood of workers into the market (also no consensus yet).

But what's missing from these evaluation studies is what makes Sharon Hays's *Flat Broke with Children* so welcome: here we see the impact of these new laws on the lives of those who have to confront them, the women and children receiving Temporary Assistance to Needy Families (TANF). But it is even richer, for Hays brings us with her into the welfare office and lets the caseworkers who are responsible for implementing the program speak, too. The result is what may be the best book yet on welfare reform. *Flat Broke* tells us more about living and surviving on the edge in America today than a library full of careful "scientific" evaluations.

Hays visited the welfare departments of two cities, here disguised as Arbordale (a mid-sized Southeastern city) and Sunbelt City (a Western metropolis) over a period of three years, from December 1997 to January 2001. She spent about 600 hours with some 50 caseworkers and 130 welfare mothers. We meet a range of women, with a broad range of experiences. What makes this such an impressive feat and contributes to making it such an insightful tale, is that she brings into play those data-driven studies I mentioned, and more, but does so in the context of introducing us to the women who must face the rule changes, live by the eligibility guidelines, avoid the sanctions, and wait under the axe of time limits. We get all the information we would get from wading

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through a pile of evaluations (and a fine, intelligible reading of them, too) but each bit of data is held up against the real experience of someone Hays met in the welfare office. The result seems effortless (surely an indication of hard labor) and can be, at moments, a revelation, even to someone for whom this is familiar terrain. More even than that, though, Hays pulls further back and confronts the larger and harder questions about the logic of reform, measuring the purported policy goals against their actual effects as administered and experienced on the ground.

Perhaps the signal accomplishment of the book, however, and the lesson for other researchers and advocates, is the complexity, the subtlety, and the intellectual honesty with which she deals with her subject. Hays never shies away from describing the opinions and behaviors of the women she has met, even those who may seem to give comfort to critics who identify poverty as a behavioral problem and a moral failure. Indeed, in *Flat Broke* one can find stereotypes of the "welfare queen." There's Nadia, a woman with four children now collecting benefits, who quit her jobs because the pay was too low and the work too hard. Joy, a drug addict, has had four abortions and two children. Sandra, belligerent, demands relief as her right. Monique admits to having a child expressly so that she could collect welfare. They are very much in the minority, but they are there.

Part of what makes Hays's biography of these women and our time so useful and so credible is that she refuses to ignore these cases, as welfare advocates can be inclined to do. We have dodged the troubling issues, for example, by denying the truth of the "perverse incentives" claims of the right. Welfare does offer a disincentive to work. But that is its virtue—it allows marginal workers or people with other demands upon their time to refuse work, if only for a while. That *choice* that welfare offers should be celebrated and shared. Hays brings us so fully into welfare mothers' lives that we have some sense of how such decisions are made. We learn that Nadia knows what little value she has in the labor market, but also knows her value as a mother; she insists that raising her children *is* work, and that she should get paid for it. TANF is her paycheck and her due. Agree or disagree, Nadia has certainly internalized at least part of the message of welfare reform, and simple judgments about the "morality" of her behavior are hard to make.

Yet Hays refuses to make welfare mothers noble or virtuous or pitiable simply because of their poverty. They are *people* here, and although some are indeed noble or pitiable, most are not. They are just the run-of-the-mill souls we encounter every day, living their complex and sometimes dreary lives. We see some of what we might call "pathological" behaviors, but we also see real women making choices, some good, some bad, some resoundingly bad, we might think, but doing what they can, as best they can. What makes these mothers different from other mothers is that their lives afford them less room for error than is likely the case for most people reading this magazine. Here poor women are not data to be entered or cases to be catalogued or fodder for political arguments, but individuals living in a specific place and time, with real children and boyfriends and sick mothers and fear and despair and hope, trying to make the best of the few choices available to them. And what their behaviors consistently reveal is that they act, most often, with their children's well-being in mind. These cases offer cold comfort to any relief opponent who reads the book, for Hays shows us women pinioned by the society in which they live, yet inculcated with its values.

It will be most striking to some, as it was even for Hays, to see the ways in which welfare mothers have so fully internalized middle-class understandings of welfare and reform—very rarely did anyone claim welfare as a right or an entitlement, or think of its receipt with much of anything but shame, even when it was the only practicable option. For most, welfare marked them as failures. They espoused very common understandings of the work ethic that belie patronizing notions that we must teach it to them. All the women Hays met thought that welfare reform was generally a good thing (or said they did), though it was complicated: they were grateful for the new monies allocated for transportation assistance, high school equivalency or computer classes, and child care

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subsidies (when they could get them). They were less sanguine about being forced to leave their children for lousy jobs, outraged when required to place children in what they deemed unsafe care, and resentful of being treated like children themselves. But they were as ready to judge who among them was worthy or unworthy as any nonrecipient might be. It is a stunning measure of how well anti-welfare rhetoric has pervaded the culture that even women's own experience cannot dislodge it.

Throughout the book Hays returns to the fundamental illogic of so much of reform. Hays shows how the PRA, in the way it is implemented in welfare offices, punishes independence or responsibility among women, rewarding, instead, docility and compliance, just as the charity reformers of earlier eras practiced what has been rightly called a form of social control. But it's more than that, as she observes:

> If we really want to include welfare mothers as active citizens, full-fledged participants in society, and the social equals of both men and the middle class, it doesn't make sense to use bureaucratic mechanisms to mentor and inspire them. If, on the other hand, what we are actually preparing them for is to serve our fast food, clean our toilets, answer our phones, ring up our receipts and change our bed pans, the bureaucratic operations of welfare could be construed as a very effective route. Deference and obedience are, after all, important qualities for many low-wage workers.

This passage cuts to the heart of the central deceit of welfare reform. For although reform rhetoric has focused upon the dependence of women, especially black women, it is in fact their *independence,* from men and from "dirty" work, that seems the real target. Hays similarly exposes the foolishness of efforts to encourage marriage through the welfare office; caseworkers sensibly make little or no effort to guide women in the ways of love because, first, they are too busy racing against the ticking clock of time limits, and, more important, they know enough about their clients' lives to know that men are as likely to be the problem as the solution. It fact, given the histories of women on welfare, Hays suggests that welfare has become a "giant economic 'shelter' for domestic violence survivors." Moreover, as Hays makes clear when taking us through, with Holly and Cassandra, the lengthy paternity questionnaire, "even though it is the one portion of the welfare law that seems to be holding fathers accountable, one immediately notices that it is *mothers* who are initially forced to endure these regulations."

Even the toughened child-support enforcement provisions of the PRA, which had much broader support than the rest of the bill, have proved to work much differently in practice than in theory. Not only are women forced to endure yet another level of state intrusion into their most personal decision making, they are compelled to make contact with men who may be a danger to them (as some predicted). Worse, women benefit little from this intrusion, since most (and in some states all) of the money collected goes to the state to "reimburse it" for welfare expenditures (in Arbordale and Sunbelt City women were allowed to keep $50 per month of any money collected in child support from the child's father). Some women are made worse off, because the fathers of their children did support their child, with what they could, when they could; some of those men, angered when faced with government intervention, cut off contact with their child and ended support entirely.

The presumptions encoded in the PRA betrayed an ignorance of poor women's lives in other ways, too. Because of their very poverty, poor women may be more connected to—dependent upon, if you prefer—their neighbors, their family, and their friends, forming extended networks as survival strategy. But those very networks mean also a greater interdependence, a greater vulnerability to the hardships and need of that extended family. If policy makers meant their family-values rhetoric they would find room to accommodate such ties. There's another tension, too: a job, any job, is the responsibility enshrined in the PRA; yet giving up welfare and Medicaid to take a minimum wage job would, as Laurel tells Hays, be an irresponsible decision for many welfare mothers. In some cases, dependence is responsibility.

Hays also shows us the practice of what Michael Lipsky has called "street-level bureau-

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cracy"; that is, how the discretion available to caseworkers can undermine policy. Just as a police officer has a wide range of options after pulling you over for speeding (from a mere warning to arrest, or worse), so too does a caseworker have the ability to arbitrarily choose among a broad range of responses to the client. She or (less commonly) he might deny benefits for reasons the law doesn't specifically permit (perhaps the caseworker is in a foul mood, or just doesn't like your attitude). Or, the caseworker might grant assistance to women who should, by rights, not receive it (say, someone particularly polite and deferential, or a friend of a cousin). Two caseworkers Hays met admitted to having used funds designated "work-related expenses" to fund abortions. To see so fully the ambivalence of caseworkers, to hear their assessment of the real effectiveness of the policy, and to witness their efforts to manipulate it and reshape it to their own values and desires in the service of other women is instructive, and even heartening.

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Hays concludes with the obligatory policy recommendations. For her, the important ones are a caregiver tax credit, child care supplements, paid family leave, a living wage, progressive change in the tax code, job training programs, and public works projects. The new supplements that came with the PRA—child care, transportation subsidies, training, and education—she judges a success. She argues that the reauthorization of the PRA should, however, end sanctions, repeal the "family cap," move away from "work first" strategies, and end efforts to discourage potential recipients from even applying, a practice institutionalized in Sunbelt City's "Diversionary Workshop." But as she observes, this is not the direction in which reauthorization is heading. Instead, the 108th Congress and the Bush administration will likely exacerbate the very worst features of the PRA—its restrictions on state flexibility, its strict work requirements, and its ill-spent funding for abstinence education and marriage promotion.

Earlier in the book, Hays tells an interesting story: caseworkers in Sunbelt City were worried as New Year's 2000 approached. It was not millennial hysteria than gave them pause, but the realization that the first local time limit on benefits would kick in. They wondered, in all seriousness, if there would be riots in the ghettos or a mob attack on the welfare office. There weren't, of course, in part because, as Hays says, "the impact of time limits is an unfolding process rather than as an explosion." I wonder though, if those caseworkers' fears had been realized, would the conventional wisdom still be that welfare reform has succeeded and would we be moving, as we are, toward making the law even harsher? In the absence of some such incontrovertible evidence to policy makers that something has gone horribly, cruelly wrong, the best we might hope for is that this book gets a wide readership, especially among those politicians who only have white paper evaluations with which to judge the success of their efforts. ●

Stephen Pimpare teaches political science at Hunter College. His book comparing recent welfare reforms with those of the Gilded Age will be published in 2004 by the New Press.

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More than Compromise

Richard Rorty

LAW, PRAGMATISM, AND DEMOCRACY
by Richard A. Posner
Harvard University Press, 2003
xii+398 pp $35 cloth

NINETEENTH-CENTURY leftists assumed all that was necessary to create a just society was universal suffrage and free schools. An educated electorate, they thought, would understand that the economy should maximize the happiness of all rather than just the wealth of investors. So they would elect candidates who would pass laws that would guarantee fair shares for all citizens and equal opportunities for all children. Social democracy would be the natural consequence of educating the workers and giving them the vote.

If this assumption had proved true, the class struggle in the United States would have been over long ago. Neither Calvin Coolidge nor George W. Bush would have been elected. But it has been proved false. The poor in the United States can not be persuaded to vote their interests—or even to vote—except at moments of extreme crisis such as the Great Depression. When they do vote, it is often merely to display their ignorance.

Many leftist intellectuals still hope that educating the masses, or educating them to a higher level, will eventually make the United States into the "participatory" or "deliberative" democracy of John Dewey's dreams—a country most of whose citizens spend time discussing the merits of alternative economic and social policies and then use their votes to back up their decisions. Intellectuals of this sort usually believe that the more the masses deliberate, the more appealing they will find social democracy.

But these same intellectuals are bewildered by the fact that millions of voters who have to scrimp to put meat on the table seem quite prepared to reelect a president who is doing his best to redistribute wealth and income from the poor to the rich. The success the Republican Party has had at inculcating the idea that "big government" is stealing taxpayers' money rather than providing a needed social safety net makes it hard to believe that educating the masses has made them more responsible citizens, much less voters sympathetic to leftist ideas. Universal literacy, and additional years spent in school, did not have the results that our leftist predecessors foresaw, and it looks as if they never will.

Richard A. Posner, a federal appellate judge who is one of the most admired figures in the American legal system, thinks we should face this fact. We should put aside the illusion that the American public will gradually become better informed and wiser. He asks us to recognize that modern democratic governments, including our own, are better described as what Alan Ryan has called "elective aristocracies" than as examples of popular rule. We should take note of the tautologous but depressing fact that half the population has an IQ below 100. We should admit that "ordinary people have as little interest in complex policy issues as they have aptitude for them."

Posner concludes that "deliberative democracy, at least as conceived by Dewey, is as purely aspirational and unrealistic as rule by Platonic guardians." What we have, and what we should be satisfied with, is an understanding of democracy that "accepts people as they are, does not think it feasible or desirable to try to change them . . . and regards representative democracy as a pragmatic method of controlling, and providing for an orderly succession of, the officials who (not the people) are the real rulers of the nation."

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To see the American political system in this way is to substitute what Posner calls "Concept 2" democracy for Deweyan "Concept 1" democracy. For Concept 2 democrats, democracy is "not self-rule" but is "rule by officials who are, however, chosen by the people and who if they don't perform to expectations are fired by the people." Concept 2 democrats "don't think that jawing in the agora is the most productive way for people to spend their time. They don't believe that politics has intrinsic value or that political activity is ennobling." Concept 2 democracy is a matter of balancing competing interests, not of debating the worth of ideas, and so is no more ennobling than commerce.

Posner, a philosophy buff who cheerfully calls himself a "moral relativist," is happy to endorse Dewey's anti-foundationalist and contextualist views about knowledge, rationality, and morality. But he thinks, rightly, that "pragmatism has no political valence" and that Dewey's social hopes have nothing in particular to do with these views. "The connection between the liberal-visionary and the pragmatic" is indeed, as he says, "purely historical and contingent." Nor does he think that philosophical pragmatism has much to contribute to legal thought. Judges will not learn how to do their job better by reading Dewey and William James. Still, he says, "the pragmatic mood, the pragmatic culture that Tocqueville described, has given rise to a different pragmatism—what I call 'everyday pragmatism'—which has much to contribute to law." This latter sort of pragmatism is embodied in Posner's own distinctive "law and economics" brand of judicial decision-making. This approach relies on cost-benefit analyses of the socio-economic consequences of deciding a case in one way rather than another.

"Everyday pragmatism," Posner continues, "is the mindset denoted by the popular usage of the word 'pragmatic,' meaning practical and businesslike, 'no-nonsense,' disdainful of abstract theory and intellectual pretension, contemptuous of moralizers and utopian dreamers." Posner contrasts the application of this kind of pragmatism to law with the originalism of a Robert Bork and the moralizing of a Ronald Dworkin. In rejecting both, he sees himself as carrying through on Justice Oliver Wendall Holmes's criticisms of legal formalism. He is quite willing to drop the pretense that the federal judiciary is above the battle and to admit that it is as political an institution as are the other two branches of the federal government.

Posner is very convincing when he describes how the American political system actually works, how the federal courts actually function, and how public opinion and elections begin to play a role only when the political elites have made a mess of things. This book is one of his best—vigorously argued and written with wit and panache. Though often pigeonholed as a conservative, Posner has little in common with William Buckley, William Kristol, or George Will. Unlike the neoconservative apologists for the Republican attempt to rip off the poor, he is a genuinely original thinker, as well as a prodigy of learning. Able to draw upon an amazingly broad range of reading, he resists stereotypes and allegiances, and goes his own way.

STILL, THERE IS something missing in Posner's account of American democracy. Maybe politics is not ennobling, and perhaps Hannah Arendt was wrong, as Posner argues she was, to try to invest the United States with the glamour of the Greek *polis*. Perhaps Dewey was overly nostalgic for the Burlington, Vermont, of his own youth—a period when the United States could still revel in its Tocquevillian newness. But just as Pericles was right when he said there was something ennobling about being a free citizen of Athens, there is still something wonderful about being an American—something that Posner has trouble taking account of.

It is not for nothing that our democracy has been seen, by millions of people throughout the last two centuries, as more than just another arena of competition between interest groups. The United States has not been a beacon of hope for the world merely because American voters have been able to fire politicians who fouled up. Our country's self-image is still shaped, and its history is still being molded, by a Lincolnesque narrative of moral progress—progress made by appeals to the better angels of our nature. Posner's account of

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how the American political system works has no room for heroes and heroines of this narrative such as Susan B. Anthony, Eugene V. Debs, Woodrow Wilson, FDR, Thurgood Marshall, Betty Friedan, and Lincoln himself. These people were, to be sure, clever politicians who knew how to work the system. But they were also utopian dreamers—the sort of people for whom Posner has little use. They were able to change people's ideas about where their interests lay, and thus to create and mobilize new interest groups. By doing so, they made their country different and better.

Posner is so suspicious of romance and idealism—far more suspicious than Tocqueville ever was—that he has trouble conceding that either has played a role in our political history. He thinks, for example, that the *Roe* Court would have been wiser to uphold the Texas abortion statute, while letting some more liberal states experiment with decriminalizing abortion. That court, he thinks, got too far out in front of public opinion and so created a fierce backlash to its decision. He contrasts it with the *Brown* court, which he describes as sensibly "waiting until such segregation was largely limited to the former confederate states and 'separate but equal' was a proven failure, before ruling that segregation was unconstitutional. It waited, in short, until the consequences of segregation were clear."

This is not how I remember the United States at the time of the *Brown* decision. Blacks who were trying to buy houses in the suburbs of New York and Chicago in order to get their children into decent schools did not think that segregation was a southern anomaly. "Separate but equal" was not "a proven failure." It was just a lie—a lie that had long been exposed. The motives and the consequences of segregation had been perfectly clear ever since the passage of the Jim Crow laws, decades before. The *Brown* decision was initially greeted with incredulity, and there were fears that the backlash would be so strong as to prevent President Dwight D. Eisenhower from enforcing it. Posner admits that the Court "may have waited too long in the case of segregation," but that is as far as he will go toward conceding that the *Brown* decision was a moral breakthrough, and that it has served as a template for later breakthrough decisions, such as the Court's recent decision to overturn anti-sodomy laws.

Posner's realism and cynicism are healthy antidotes to leftist fantasies of an electorate modeled on a university seminar. He is right when he says that the "practical advantages of our Concept 2 democracy and the lack of any solid evidence of the feasibility or desirability of moving to Concept 1 have persuaded the vast majority of the American people to accept, more or less cheerfully, the system we have." But he is also right to note that "legitimacy must not be confused with enthusiasm" and then to ask whether "Concept 2 democracy is . . . the sort of thing Americans are willing to die for."

It is not an adequate answer to that question to say, as Posner does, that "Americans' primary allegiance is to more concrete objects . . . such as the American flag . . . than to a particular democratic ideology." Americans are not just proud of their flag. They are also proud of having made their country morally better than it used to be. Americans have become, in the years since *Brown*, proud of Marshall and of Martin Luther King—of dreamers who helped their country to realize its promise, and to overcome its shameful past. Most of the time American democracy is a matter of pragmatic compromise between interest groups. But occasionally it is much more than that. It is those latter moments that we have in mind when we explain to our children what a great thing it is to be an American. ●

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Stranger and Stranger

Mark Greif

PLATFORM
by Michel Houellebecq
translated by Frank Wynne
Knopf, 2003 272 pp $25

ONE THING IS clear from the outset. The liberation of sexual practices in the last decades of the twentieth century *did* reorient all of culture around sex. It was hardly unprecedented for a society to devote itself drastically to a single instinct; think of the headhunting tribe's elevation of aggression. But the consequences were unpredictable in the advanced societies of the United States and Western Europe.

It would have been possible to foresee an etiquette by which people would partake of sex as they agreed to lunch or coffee, casually and with the same degree of politeness and duty. How grateful we could have been for such a development. A society so gentle and egalitarian would preserve access to sex for the aged and unattractive and relieve the beautiful and young of a persistent carnal burden. Certainly America and Europe after 1970 have had few newer and more urgent interests than serving an expanded eroticism. But this service took a less benign shape. The West focused its fantasies on a small spectrum of sexualized youth, age sixteen to twenty-four. Establishing the sexual superiority of the young, it created a false economy of scarcity and competition. Neo-Darwinism justified it with a discourse of evolutionary fitness, as if the whole of evolution led up to this sexual valuation of people barely past adolescence. Adult desire modeled itself on a longing for youth; not only on the wish for young bodies, but on the maintenance of a lifestyle of individual gratification. Commerce inserted the goods and services of technology into the necessities of sex, with paraphernalia, cameras, sex therapy, Viagra, enhancement surgery, and pornography. In short, it has proven our fate to inflate the meaning of sexuality wildly, within a market economy, when we could have acknowledged an equal capacity for sex in everyone and its general unimportance.

The critique of contemporary sexuality is the trademark of the novelist, essayist, and poet Michel Houellebecq. Houellebecq is one of the few new European writers to have caused international excitement. He is a sex novelist famous for scandal but capable of thought. The Frenchman's range, his vocation for social prophecy, and his erratic persona (drunk, depressed, licentious) have placed him in a tradition alongside heroic figures very much unlike him, including Camus, whose work he compulsively travesties. His declarations of the spread of the market to untouched realms of private life have a long history, from Marx to Marcuse. Houellebecq uses the ideas of the left against itself, to extend a restless criticism to spheres we had believed were preserves of freedom. Marcuse seems a special object of revenge, punished for his belief that Eros could remain exempt from the dialectical progress of capitalist enlightenment. If Houellebecq's ideas are not entirely original, his vivid portrayals and single-minded attacks give him almost sole title to an anti-liberatory line of sexual thinking.

In Houellebecq's first novel, *Extension of the Domain of Struggle* (1994, translated in America as *Whatever*), he intimated that sex in contemporary times has become a second system of social differentiation. It resembles wealth but has still more disastrous consequences of stratification. For Houellebecq, sexual liberation led to an absolute sexual pauperization for the mass of average people—

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who are neither unusually alluring nor socially adept, and who stay home alone in their misery. By the same processes, ridiculous sexual prestige, pretension, and license came to an arbitrary few. Liberation was neoliberal, transferring the market economy into the private sphere, whose humane character previously had been protected by institutions of family that had only been seen as repressive. "[S]exual liberalism," he wrote, "is the extension of the domain of struggle, its extension to all stages of life and all classes of society." In *The Elementary Particles*, his second novel, Houellebecq traced the origins of the collusion between liberation and market forces to the hippies and liberals of the 1960s. (He also fantasized, with characteristic extravagance, that genetic engineering could be used to eradicate the two sexes, allowing civilized happiness to blossom once human beings were superseded.)

The newest novel, *Platform*, recently published in America, defends sex tourism. Houellebecq's critique has changed. According to him now, Thai prostitutes and European tourists are made for each other. The sexual unhappiness of the West will be cured, and in turn the flow of cash and services will cure the financial underdevelopment of the East. "Myself, I [see] no objection to sexuality going back into the domain of the market economy," Houellebecq's narrator says—at least when the sex economy becomes this naked and open. Directly contradicting an earlier position, Houellebecq also seems to be arguing that there's something about the most overtly commercial sex that's spiritually redemptive. But it proves to be commerce itself, not sex, that's at the center of *Platform*'s healing fantasy—and a form of non-Western violence, rather than a struggle inherent to the system of the West, that's the enemy.

Platform is a Frankenstein. It begins with a murder mystery that gets solved by page 12. "Father died last year": the first words parody *The Stranger* and its famous dead mother. A Muslim bludgeoned Michel's father to death, we soon learn—and it is as if the anonymous Arab killed on Camus's beach had returned for revenge. Houellebecq loses no time in announcing his inversion of the moral gravity of France's best-known midcentury novel. This accomplished, his hero can go on vacation; he flies to Thailand to launch the novel's real offensive against morals. The book's second act is a travelogue. We learn that Thai sex masseuses are generous, appreciative, family-oriented, and entrepreneurial. European women, on the other hand, are cruel and psychologically stunted. Michel makes fun of a number of them who join him on a package tour. Only one woman seems different, he notices, in breaks between massages, masturbation, and reading American thrillers—a mousy fellow vacationer named Valérie.

Michel and Valérie become lovers as soon as they return to Paris. In its third act, by far the most entertaining, the novel develops a tale of business. Sex continues, to be sure: at an S&M club, incorporating a hotel chambermaid in Cuba, or with an elegant stranger in a sauna. But Valérie's career is what matters. She is right-hand woman to a rising star of the tourist industry, Jean-Yves. The pair have become sole directors of a campaign to revive a chain of Club-Med-style resorts. With Michel as their creative force and moral support, they decide to reposition the hotels as humanitarian brothels—spas where ordinary middle-class holidaymakers can employ sex workers without danger or shame. Valérie and Jean-Yves make some choices, consult practically no one, and transform the world.

Now Michel has two perfect outlets for the instinct to happiness that modern life had cauterized in him. The corporate planning makes him a sort of artist. It satisfies his creative side as his former career arranging "cultural events" and art openings never did. "In a state of excitement that was a little bit unreal, we established a planning platform for dividing up the world. The suggestions that I was going to make might have as a consequence the investment of millions of francs, or the employment of hundreds of people; for me it was new, and quite breathtaking." At the same time, heroic doses of sex, shared with the blessed and willing Valérie, restore in him the serene innocence needed for true happiness and love. Michel is fast on his way to becoming a contented househusband. A truly open and paid-for sex is truly liberating: no more anomie; no more competi-

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tion; only his beloved's paycheck, cooking dinner, and a *bonheur à deux*, enhanced with occasional threesomes. The market, suitably unburdened of hypocrisy or restraint, can be a salvation.

In act four—a kind of epilogue—the fantasy collapses. As their first Thai sex-resort opens, and Michel and Valérie agree to marry, to settle at the hotel together, and to live in absolute bliss, a cadre of turbaned terrorists invades the tourist settlement. The Muslims machine gun Valérie to death at dinner, along with many of the hotel's patrons, and blow up a nightclub in the tourist center. That's it. In Paris, newspapers blame the tourists for violating the terrorists' moral values. Michel wends toward oblivion.

Platform is not good, as *The Elementary Particles* was. It's written badly by an author who has demonstrated elsewhere an austere command of language. It's very funny, of course. Houellebecq's defeats are more interesting than other authors' successes. Still, for many readers the book will just be unpleasant. Some will find it, as I did, all too pleasant, and this is the thing that needs to be explained, especially for a book so literarily sloppy. The problem of Houellebecq as a whole is why he is so lovable even when he's posturing. *Platform* presents a certain Western inner monologue, with little distortion or hypocrisy, that can be occasionally revealing but is always deeply ingratiating. The *pleasure* of the book despite its poverty is its one really striking feature.

This pleasure exists most obviously in the tone. Houellebecq had a tone before he had his material. "Life is painful and disappointing" was the opening sentence of his first publication, and that was just a piece of literary criticism. He also early on had a "method," as he termed it explicitly in the subtitle to a second book, delivering an outline of rules for living as a poet, or a *poète maudit*. The essential rule was to turn pain into art.

Before he had written anything of note, in fact, Houellebecq revived an antique theory of writing: that any loss in life, understood in quantities of suffering, must be turned to a profit in art, measured in quantities of emotion. He truly believed this. The idea can be traced to the Romantic poets, or especially to nineteenth-century aestheticism, in the peculiar emotional-economic conversions we associate with Charles Baudelaire and many an anti-bourgeois poet.

Houellebecq's transforming insight was that the highest rate of return on pain could be achieved today without opposing the dominant values of society. Houellebecq's heroes would so nakedly accept and defend banal social practices that the practices would become unrecognizable, in fact offensive. And yet the heroes would still be compulsive failures: doggedly following the social forms, intelligently identifying their true meanings, yet unable to fall into the un-self-conscious pretention or true belief that alone could give any hope of success. Houellebecq rejected the aristocratic, anti-bourgeois "outsider," the "rebel." Instead, he would dream up middle-class protagonists who became inside-outsiders, rebels because of the contradictory quality of their naïve conformity.

This stood out most in the emotional power Houellebecq got from a way of over-accepting the elements of everyday life. Monoprix does not make a take-home dinner so that you can meditate on it. Prepared foods do not exist for you to dwell, as Houellebecq does, on the feelings of isolation produced in you by frozen *coq au vin*—as you then accede to commercial values, dizzying yourself in willful praise of frozen permanence, asepsis, and convenience. The marketing department does not want you to follow its cheerful advertising slogans with your own hysterical speeches of insolent opposition to all those who doubt the value of the take-home dinner, all those malefactors who say it is better to cook from scratch, to eat "natural foods," or to share dinner with company. In fact, the culture that stands behind the take-home dinner finds your praise odd, not to say disgusting—because that culture wants to believe its conveniences are helping the old humane values, which Houellebecq praises it for circumventing. Houellebecq has managed to become a bad boy for both right and left, while shrugging, "Who, me? But I am only showing you what your culture wants!"

In *Platform*, then, Houellebecq can claim

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to be working out the deep logic of sexual markets. And worked out far enough, that logic should be freeing instead of enslaving. As Houellebecq always said, if sex is kept alongside the money economy, if it fosters individual competition for the most attractive, if it is confused with the promises of love, it will cause most people pain. If, on the other hand, a means is discovered of making sex available to all, by pushing it entirely into a money economy where it is affordable and disenchanted ("commoditized," in sales jargon), then you truly liberate people. In fact, Houellebecq goes so far as to suggest, with sex gotten out of the way, bought and paid for like a TV dinner, you reopen the possibility of love for people who have absolutely nothing special about them. Love is something different, which the market deadened but could not take over. It is an inviolate sphere, containing mothers, children, caring, puppy dogs, and cooking. Houellebecq has never denied being a sentimentalist.

YET THE SEXUAL argument seems oddly beside the point in the actual reading of *Platform*. The book is really about business. The sex scenes are dull and brutal. They become tolerable only when Michel makes a grandiloquent speech about his or Valérie's orgasms' role in the return of happiness to Europe. The real pleasure of the book revolves around Valérie's and Jean-Yves' company, their magic capitalism. It represents multinational business as similar to setting up a lemonade stand, and it's true, reading about it is like eating candy. By mid-book, we discover that we are turning pages mostly for the entrepreneurial project. This is also the significance of the kaleidoscopic tour through other narrative forms in the novel: the murder mystery, the travelogue and travel brochure, and the airport thriller (Houellebecq beats up particularly on John Grisham's *The Firm*). All are literatures that exist just for pleasure, for a pursuit that leads to gratification, and Houellebecq shows he can do them one better in a business plot within a literary novel.

There is something correct here about the way we fantasize. When you have no access to the means of creation, when you lack capital and social position, when you are versed as we all are in the rhetoric of commercial creation, when you have learned in the twenty-first century that whatever can be thought will be attempted for profit, then how could you not spend your best creative impulses in imagining new products to bring to market? We do, in fact, daydream clever advertisements, scripts for films, drug protocols, business ventures, or, for that matter, chains of erotic resorts—all of them beyond our power to develop. The insight of the novel is that capitalism can become our best private fantasy, even better than the violence, sex, personality, or intellect we think we read for.

For reasons that aren't easy to fathom, Muslims serve as the reality check to this dream. If the preceding is fantasy—sex and capitalism, true love and rationalized satisfactions—violent Muslims are, in *Platform*, the Law. Not infidel hordes, but forces of order, they are closest in spirit to Houellebecq's more familiar targets, leftist moralists. But they mark a turn away from the usual Western, systematic objects of his animosity.

To a degree, Houellebecq can be saluted for prescience. *Platform* appeared in France two weeks before the attacks of September 11, 2001. Thirteen months later, the al-Qaeda-linked explosion in a nightclub in Bali recalled Houellebecq's fictional Thailand massacre. Beyond this retrospective explanation, his choice of Muslims for spoilers seems arbitrary. It's true that Houellebecq has long thought of Islam basically in its connection to terrorism. In France, tensions surrounding the presence of Muslim populations in the working-class suburbs must be pertinent—especially the neighborhoods where the remainder of that generation-of-the-grandparents lives, with whom Houellebecq so strongly identifies in his sentimental moments (he was raised by his grandmother).

The effect of the climactic Muslim murderers in *Platform* is to remind us of the reality that in the middle of the book we manage to forget. They are, of course, a ridiculous *deus ex machina*. But we had managed to let go of all the necessary obstacles to international prostitution resorts, so badly did we want the business plan to work; we had ignored the verbal and legal attacks that would come in the real

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world, from governments, from feminists, from NGOs, from the media, and that we would launch ourselves. Houellebecq's style is not satire, it does not rely on far-off possibilities: it is ultra-realistic. The ridiculousness of the terrorists is, at best, a stab at our ridiculous will to give ourselves up to an impossible plot.

His Muslims can't only be a formal device though, and they suggest a fatal misuse of the prime Houellebecqian technique—the exposure of the logic of institutions (here, radical Islam) by taking over their supposed rules. There is an easy-to-miss passage at the beginning of the book, when Michel describes facing his father's Muslim murderer. Michel begins the encounter in a spirit of placid indifference (he didn't even like his father). Then comes a turn:

> [F]lanked by two policemen, [the Muslim] fixed a sullen stare on the floor. . . . Looking up, his eyes met mine, and no doubt he knew who I was. He knew my role; he had undoubtedly been told. According to his brutal view of the world, I had a right to vengeance, I deserved an accounting of the blood of my father. Aware of the rapport establishing itself between us, I stared at him, not turning away. I allowed hatred to overwhelm me slowly, and my breathing became easier. It was a powerful, pleasurable sensation. If I had had a gun, I would have shot him without a second thought.

The curious thing about this passage, and the early pages surrounding it, is that they suggest that Michel's ability to hate comes from learning an imagined role from Muslims. "According to his brutal view of the world, I had a right to vengeance": it is as if Michel gains his emotion from the discovery of an expectation, a code, and he makes himself discern an invitation to make the mood his own. Society wouldn't approve of this—one "naturally" hates a father's killer, one doesn't work it up—any more than it does Houellebecq's adoption of the values of consumer goods or paid-for sex.

To pick a party outside the West as your new source of energy, to let a fantasy Muslim teach you to feel justified in retribution and "vengeance," is to flirt with intellectual collapse. When Houellebecq's approach produces insight, it's because of a certain hidden, systematic character he is able to reveal from the inside, in institutions that are meaningfully his own. He is a dialectical clown, who finds menace in benevolent institutions and opportunities for deliberate misappropriation in the malignant. This is Houellebecq at his best. But dialecticians risk making their inversions of thought mechanical. The outcomes are not thought through. Houellebecq pays the price then, for creating himself as one of the most exciting writers in Europe today, in the suspicion that parts of *Platform* were not written by his brain, which is very fine, but by his persona, which marches on without him. ●

Mark Greif is a senior correspondent at *The American Prospect*.

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Weapons Inspections and Expectations

Editors:

In his Summer 2003 "Editor's Page," Mitchell Cohen makes an arresting statement: "Recall doves insisting that UN scrutiny could reveal all weapons of mass destruction sequestered in Saddam's fascist state. (Those doves didn't propose that Iraq's dictator had spent years frustrating inspections in order to save a nonexistent arsenal.)"

Cohen, intent on encouraging us in "reordering [our] thoughts," offers up this sentiment as an example of prewar wrong-headedness. As I recall, we insisted that the UN inspectors should be given time to do their job so that, if there were any weapons to be found, they would find them. For the full magnitude of that "if," I refer Cohen to the hawk turned dove who insisted on the nonexistence of Iraq's alleged weapons of mass destruction throughout the long run-up to war, former UN chief weapons inspector Scott Ritter (who also pointed out that resistance by a totalitarian state to international inspection teams riddled with CIA assets was rather to be expected). Though subjected to a retaliatory smear campaign and greater pressure than that which brought about the suicide of David Kelly, Ritter persisted in telling this truth, and no one who heard or read the evidentiary case he laid out could avoid its conclusion: Iraq disposed of its stocks of chemical and biological weapons after the 1991 Gulf War, its nuclear program had been destroyed, and it had not reconstituted those programs.

More than a few people came to agree with Ritter as he went about very publicly making his case seven months before the war. I am surprised that Cohen didn't hear.

Andrew Christie
North Hollywood, California

Mitchell Cohen Replies

Andrew Christie and I have an "if . . . then" problem. If Ritter was right to insist on "the nonexistence of Iraq's weapons of mass destruction," then inspections were obviously unnecessary. And if, in Christie's words, Ritter's "evidentiary case" demonstrated that Baghdad "disposed" definitively "of its stocks of chemical and biological weapons" and its nuclear program in 1991, then doves should have protested last fall's Security Council resolution—a 15-0 vote—demanding that Saddam readmit inspectors. Why waste UN resources in a hunt for something nonexistent? Better to divert them elsewhere, say, to the Congo. But Christie's assumptions are dubious. To start, he doesn't differentiate lethal capacities from stockpiles. On August 31, 1998, Ritter, who had just quit the UN Special Commission inspecting Iraq, told the *NewsHour with Jim Lehrer,*

> Iraq still has prescribed weapons capability. There needs to be a careful distinction here. Iraq today is challenging the special commission to come up with a weapon and say where is the weapon in Iraq and yet part of their efforts to conceal their capabilities, I believe, have been to disassemble weapons into various components and to hide the components throughout Iraq. I think the danger right now is that without effective inspections, without effective monitoring, Iraq can in a very short period of time measure the months, reconstitute chemical biological weapons, long range ballistic missiles to deliver these weapons, and even certain aspects of their nuclearization program. [Grammar as it appears on the *NewsHour*'s Web site.]

He argued likewise in a *New Republic* article. Ritter's letter of resignation declared UNSCOM to be "hobbled by unfettered Iraqi obstruction and nonexistent Security Council enforcement of its own resolutions."

Whom to believe? Ritter I, who denounced "nonexistent" enforcement of UN resolutions, or Ritter II, who asserts the non-existence of WMD? Perhaps it is worth recalling that there were no inspections between December 1998 and 2002, and that only the threat of U.S. military force—not the Security Council resolution—pushed Saddam to admit them (for yet another wild goose chase).

Ritter may have gone from hawk to dove, but people on the left should be reserved about making him a standard bearer. Last fall he expressed great "trepidation" about attending an antiwar rally in the United Kingdom because "mass demonstrations regardless of the righteousness of the cause" are "the political theater of the left, and not something with which I should be associated." Ritter, a registered Republican who voted for

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George W. Bush, was greatly relieved that demonstrators came "not only from the left" but from "the mainstream." (*Guardian*, October 7, 2002).

Lucky for him. Yet these qualms about his political company do not extend to Iraqi fascists and their supporters. Ritter managed to address the Iraqi Parliament in the same month (September) that he was reluctant to be around "the left." Yes, he would probably claim that he went as a soldier of peace. But Iraq's Parliament was no more than its dictator's tool. Anyone who imagines otherwise has a wobbly grasp of totalitarian politics. Ritter declared to Saddam's minions that "the truth of the matter is that Iraq today is not a threat to its neighbors and is not acting in a manner which threatens anyone outside its borders." Well, let's leave aside the threat Saddam posed to people within Iraq's borders and just note that Ritter declared moments later, in the same speech, that "Iraq must renounce violence and aggression against all its neighbors." If Iraq posed no threat, why should it have to renounce aggression? And if Ritter is dependable how was he able (earlier on) to accept four hundred thousand dollars from a pro-Saddam businessman, Iraqi-American Shakir al-Khafaji, to underwrite a documentary about—you guessed it—arms inspections in Iraq? Surely the reporting was fair and balanced, as they like to say on Fox News. I understand that Ritter now concedes this last transaction was a mistake. I agree.

All this makes comparisons of Ritter to David Kelly inappropriate. Christie implies that both men were victimized by smear campaigns because they told the truth. But Ritter and Kelly, a distinguished microbiologist who went to Iraq thirty-seven times for the UN, seem to have disagreed about the truth. The accounts I have read—I write two weeks after Kelly's tragic death—indicate that although Kelly was unhappy about how the British government made its case for war, he continued to believe that Iraq's pursuit of WMD had been very real, dangerous, and not nonexistent.

Military Forecasting

Editors:

As a professional military historian I found Fred Smoler's article interesting ("Cakewalk: Getting It Wrong," Summer 2003). My greatest complaint about it is how quick he was to draw conclusions. As Smoler points out, we do not know the activities of the U.S./UK Special Forces in Iraq, we do not know what the actual plans and timetables for the war were, and we have no idea what Iraqi casualties were. Therefore, drawing "lessons" from the incident is a somewhat dubious undertaking at this stage. Also, I found his insidious combination of "pessimists" and Baathists in the same sentence akin to character assassination: doubting that the war will go well equals sympathizing somehow with the Hussein regime. This little trick was used ad infinitum to try to discredit anyone who had doubts about the Iraqi venture and is both misleading and unworthy of an author doing a fair job at putting over a serious argument. Before it started, I sat down and handicapped the war (which I unequivocally opposed). My guesses: the war would take 14 to 20 days, cost the Iraqis 61,000 killed, wounded, and missing (military and civilian) and about 400 U.S./UK killed, wounded, and missing. Not too bad, but far from perfect. The Associated Press has documented at least three thousand Iraqi civilian dead; the U.S. military probably has a fair idea how many Iraqi military casualties were inflicted but will guard and suppress the figure.

Where I think we all got it wrong was in the ratio of wounded to killed. This has historically been between 6:1 and 10:1. In this war the ratio could have been as low as 1:1. What does this war say about the future of military operations? Well, it says we're back to 1898 and the Battle of Omdurman, where Horatio Kitchener and his 13,000 Anglo-Egyptian troops smashed 55,000 Sudanese and inflicted more than 20,000 casualties for the loss of about 50 men. It means that the efforts to establish some "laws of war" are out the window because law can only apply to equals, and with a mismatch like the one that exists between U.S. and third world firepower the "enemies" of the future would be nuts not to pull out all the stops—it's their only chance to fight back and even the contest. They will use terrorism, "dirty" bombs, poisons, chemicals, and anything else they can get their hands on to redress the imbalance. Americans will still win, but the costs are going to escalate. Like the Europeans and Americans in the 1880s-1890s, "we have the Maxim gun and they have not." How long this situation will last is anyone's guess.

James Levy
Levittown, N.Y.

Editors:

Fred Smoler makes the easy point that I and others mis-predicted the immediate outcome of the battle for Baghdad. My April 1 statement was that one cannot subdue "a large and hostile city without destroying it completely." Iraq's military forces collapsed outside the city. Mercifully.

But now? Here is another passage from the same essay, which doesn't read so badly now:

> The fact remains that Iraq is presently governed by a very

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> effective armed gang, numbering in the scores of thousands. It will therefore continue to offer stiff resistance first to occupation and later to reconstruction, until that gang is destroyed, root and branch, by a far superior force. And, it is now clear, the application of that force, if it can succeed at all, must entail a horrific level of violence.

All this could be foreseen much earlier. In a private memorandum to a potential presidential contender in November 2002, I wrote the following:

> . . .while the impending war on Iraq may prove to be fairly easy . . . the post-war occupation is certainly going to be ugly. Iraq is a huge country. The oil fields, the cities and the ports will need to be protected. The protectors will need to be protected. Saddam has 150,000 secret police who will not physically disappear. There is a large Shi'a population with whom our relations could deteriorate quickly if their leaders don't like our rule. . . . Algeria comes to mind; does anyone remember?

The point is not about any particular prediction. It is that our combat prowess bears little on the miseries of garrisons and occupation. The planes and tanks are powerful and discriminating but useless once the open battles stop. And for this reason, the antiwar analysis is proving correct, in broad outline.

James K. Galbraith
Austin, Texas

Fred Smoler Replies

James Levy thinks me guilty of something akin to character assassination, complains of my quickness at drawing conclusions, and subsequently draws one of his own. It is admittedly easy to misunderstand the meaning of recent events; Chou En Lai's admirable caution about the significance of the French Revolution springs to mind ("too soon to tell"). But people writing for political quarterlies necessarily draw tentative conclusions about very recent events, and historical perspective does not always settle questions

The charge of character assassination via the linkage of pessimists and Baathists is puzzling; I mention "pessimists" first in the seventh paragraph, while the sentence containing both words appears in the sixteenth. That later sentence merely observes that pessimists and Baathists often agreed about the likely course of the war, which they did. While some opponents of the war wound up as de facto apologists for the Baathists, most opponents of the war had no wish to see Saddam's regime preserved (although they refused to endorse the only means likely to destroy it). Some members of the antiwar movement audibly hoped for an American defeat, or at least more American losses, so that we might be properly chastened, but I would never contend that typical opponents of the war were "Baathist sympathizers."

Levy's conclusion is that "the efforts to establish some 'laws of war' are out the window because law can only apply to equals, and with a mismatch like the one that exists between U.S. and third world firepower, the 'enemies' of the future would be nuts not to pull out all the stops . . . " But equality of power is of dubious relevance, for the strong are at least as likely as the weak to ignore the laws of war. Germany seemed much the stronger belligerent in the summer of 1941, the Soviet Union much the weaker, but the Germans scorned the laws of war, while the Soviets initially begged that they be adopted. The Japanese meticulously observed the laws in 1905, when they initially seemed to be the weaker party, and flouted them in the 1930s, against a China they grossly overmatched. Weak eighteenth-century European states almost invariably observed the laws of war in contests with much more powerful European enemies. Laws of war require a shared military culture and a sense of enlightened self-interest; they are enforced by shame, the threat of reprisal, and possibly by the threat of postwar prosecution. Our least scrupulous antagonists are most likely to scorn laws of war if they think that they will gain an advantage by doing so, and in current debates relative military power is almost certainly overstated as a cause of terror and atrocity.

James K. Galbraith writes that he was correct to predict that the occupation and reconstruction of Iraq "must entail a horrific level of violence," that "the antiwar analysis is proving correct, in broad outline," and that "Algeria comes to mind; does anyone remember?" Do the current Iraqi guerrilla and terror tactics, combined with Coalition responses, amount to "a horrific level of violence"? If so, compared to what? Exhumation and identification of the Baathists' Iraqi victims is a laborious process, but the current estimate of the number we expect to find is three hundred thousand. If we also count the victims of Saddam's wars against Iran and Kuwait, we exceed the current toll of the postwar fighting by three orders of magnitude. This counts only the dead and ignores the regime's taste for rape, mutilation, and torture. Does Galbraith think that any probable postwar environment will see violence on a comparable scale? The invocation of Algeria suggests that he does, but if he means either the Algeria of the colonial war or the Algeria of the current civil war, the violence in postwar Iraq is again down by orders of magnitude.

The postwar situation is disturbing for a number of reasons, and cause for some pessimism, but not yet for dystopian pessimism. My own sense is that "the antiwar analysis" will prove "correct, in broad outline" when

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the regime we destroyed seems even remotely preferable to what we have inflicted and suffered.

On Genocide and Gujarat

Editors,

In the Summer 2003 issue of *Dissent*, Martha Nussbaum writes that some Indian-American charities are supporting anti-Muslim and anti-minority activities in India ("Genocide in Gujarat: The International Community Looks Away"). She claims that "the connection of these charities to the funding of hatred has now been amply documented in a report entitled 'The Foreign Exchange of Hate: IDRF and the American Funding of Hindutva' that may be accessed online (IDRF being the acronym of the India Development and Relief Fund, the chief charity in question). What this report shows (and other sources have confirmed) is that almost no money from this allegedly charitable organization goes to fund welfare or general poverty relief. Funds are targeted, first, at organizations for Hindus only. Second, the money is largely used for cultural activities that are highly inflammatory in character, in particular for the camps of the Bajrang Dal, where young Hindu boys are taught the ideology of Hindutva and where hatred and fear of Muslims are openly advocated."

I am one of the authors of a report rebutting the allegations made in the "Foreign Exchange of Hate" report. It is distressing to note that you as editors and Nussbaum as writer made no attempts to either contact the IDRF for its version of its charitable activities nor did you contact me or my co-authors of the report titled "A Factual Response to the Hate Attack on the IDRF" (http://www.letindiadevelop.org/thereport/). What you and Nussbaum have done is a smear job on an organization founded by Vinod Prakash, a former World Bank official. Freedom of expression does not entitle you and Nussbaum to spread vicious lies. IDRF has raised about ten million dollars in the past twelve or thirteen years and disseminated it across India for disaster relief, child welfare, education, and rural development. India, just in one year, 2000-2001, received about a billion dollars in foreign donations from charitable organizations, and the majority of the money went to Indian Christian organizations. If you or Nussbaum can show that even a dollar has gone from IDRF to fund Bajrang Dal camps please give your readers the specific details.

Ramesh N. Rao
(formerly Closepet Ramesh)
Kirksville, Missouri

Martha Nussbaum Replies

I stand by my claims. The report that I cite is careful, unbiased, and convincing. Similar conclusions were reached independently by an important study published in the *Financial Times*, February 21, 2003. The reply authored by Ramesh Rao and others is diffuse, obfuscatory, and unconvincing. Nor does Rao even deny a relation between IDRF and the RSS; in many statements he has praised the RSS as a fine organization, utterly failing to mention or criticize its role in fomenting hatred and perpetrating genocide. I urge readers to study the documents for themselves. The right course at this point is clearly a full congressional investigation of this alleged charity. I urge readers who come to the same conclusion to write their representatives.

Tort Law

Editors:

Daphne Eviatar characterizes our book, *Democracy by Decree* ("Sue the Bastards . . . Or Not," Summer 2003), as arguing that state and local officials "should be allowed to run [government] as they see fit—no matter that they'd proven unable or unwilling to do so in accordance with the law." In terms of the title of her essay, we are for not suing, or so she claims. Yet, the book we actually wrote argues that courts should enforce the law against government, but in ways that avoid the little known, but important unintended consequences of institutional reform litigation. Such consequences should matter to readers of *Dissent*. They hurt the little and the great.

Consent decrees fall under the control of a few lawyers who operate with almost no involvement of the judges in whose name the decrees go forward. Those few lawyers who end up supervising the decree control the management of huge public institutions and do so for decades. Personal agendas substitute for rights, diluting legislative and executive responsibility at the expense of elected officials and of the voters to whom they are responsible. Conditions often do not improve and sometimes worsen. Unintended and unwanted consequences regularly appear, but rigid court procedures make it difficult to adjust.

We are joined in these observations by some plaintiffs' attorneys who have handled consent decrees and by many judges who have supervised them. For example, Judge Robert Ward, who recently passed away, told us that one of the lessons he learned from supervising the New York City foster care case called *Wilder v. Bernstein* for twenty-one years was that he had to find a better way.

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His better way, which we described in detail in the book, was to approve a new consent decree that enforced rights, but declined to give control of New York City's foster care program to the lawyers. Instead he left the program under the authority of the mayor without court-ordered milestones or court- designed plans. Judge Ward ordered that even this decree would terminate after two years provided that the City showed it could advance its own remedial plan in good faith. The City did, conditions for foster care children improved, and the order terminated on schedule.

We devote an entire chapter to specific proposals for how to "keep the court house door open" to victims, protect their rights and still preserve local democracy. Eviatar fails to even mention our proposals. Had she come to grips with them, and had she stated her arguments against them, if she has any, we might have had a useful dialogue about a serious problem that concerns public interest advocates, their clients, and the rest of us.

Ross Sandler
David Schoenbrod
New York, N.Y.

Daphne Eviatar Replies

Ross Sandler and David Schoenbrod say they're concerned about the undue influence of a "controlling group" of lawyers and experts who have somehow wrested control from federal judges, citing the obviously flawed settlement in *Wilder v. Bernstein* as if it were today's norm. But as they well know, Wilder, filed in 1973, is nothing like the cases brought and settled today. Lawyers and judges have learned over the past thirty years to craft decrees that give government officials the flexibility they need while still enforcing the law. That's not what these authors are after.

The authors claim they want to "keep the courthouse door open" to victims. In fact, some of their suggestions come close to slamming it shut. For instance, they want court orders against government agencies to be enforceable only so long as the head of the agency at the time of the court's order remains in office. And they want every decree to start with an end date, at which time the court's order would disappear, regardless of whether the government has complied with it. But if the court's mandates simply dissolve when a government official quits, or after some arbitrary date has passed, what's the agency's incentive to comply? And if the agency has begun to change to meet the decree's demands, what's to keep it moving in the right direction after those demands are gone?

This was the great flaw of what they see as the "model" settlement in the New York City child welfare case, *Marisol v. Giuliani*. I worked on that case as a lawyer. When we settled, we knew we were dangerously dependent on the good faith of the city commissioner, Nicholas Scoppetta, and the expert panel advising him, to make the most of the brief two-year decree. Now, almost three years after its end, the approximately hundred thousand abused and neglected children of New York City have no guarantees that the critical reforms spurred by the lawsuit—better training for child welfare workers, smaller caseloads, and increased supervision of foster care agencies, for example—will continue. And Scoppetta, once hailed as the child welfare agency's savior, has since left the job. As he told me in a recent interview, reforming a government bureaucracy takes far longer than politicians realize. "Mayors think in terms of four years, he said. "But it's a marathon, not a sprint." Sandler and Schoenbrod refuse to recognize that court orders are often the only way to make sure the bureaucrats make it to the finish line.

To Letter Writers

● *We welcome succinct letters from our readers. But because we have a long lead time for each issue, you have to send us your letter within three weeks of getting an issue of* Dissent *in order to get it into the next issue.*

● ***Letters must be no more than 500 words,*** *typed, double-spaced, and carry the full address and name of the sender. We reserve the right to edit letters down to fit our space and to choose which shall be printed. We are unable to acknowledge letters. Letters will not be returned to senders unless they are accompanied by stamped, self-addressed envelopes. We accept e-mail submissions to editors@dissentmagazine.org, but request that you provide a street address and phone number.*

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Participants with birthdays between the months of July and September were told to congregate at a bar and grill off Broadway in Midtown, a few minutes before 7 p.m. and to await further instructions.

When I arrived, the bar was packed, but not enough to attract the suspicion of management. After a few minutes, a man made his way through the crowd, slyly distributing scraps of paper with our instructions. We were to enter the Toys "R" Us superstore on Broadway at 7:14; gather around the animatronic T. Rex in the Jurassic Park section at 7:18; and at 7:20 fall to our knees in front of it, raising our arms in fear and awe, screaming like terrified worshippers for exactly four minutes.

Security guards managed to shut the dinosaur off only seconds before 7:24, our preappointed end. More impressive than the successful planning and timing, though, was the number of participants: there must have been three hundred mobbers present.

This was the sixth such event in New York. Similarly absurd mobs have sprung up in cities all over the United States and in Europe. There are several sites on the Web devoted to initiating them, but although each event is clearly the brainchild of a particular organizer, none have gone out of their way to lay authorial claim to them.

The experience—its calculated mystery, its silliness—was fun, but the whole phenomenon begs the question: what for? The trend clearly owes some debt to Situationist ideas, guerrilla theater, and other tactics of creative civil disobedience, but where the Situationists were on some level attempting to extend a Marxist critique into a post-consumerist, leisure-class age—their spraypainted slogans on the sides of buildings in Paris in 1968 may have been elliptical and self-consciously vague, but they were at least identifiable as anticapitalist critique—these flash mobs seem designed to resist such interpretation. The mob I participated in did take place in a giant toy store, and the monster we ironically celebrated was one of the few objects in sight not for sale, but the event seemed intended primarily for the sake of public absurdity.

However they were rallied, the participants showed up, it appeared, not for the creation of a pocket of quasi-public space within a proudly commercial space, but for kicks. Going in, I had expected the usual motley of anti-globalization radicals, but the group I was with was a fairly polished, young professional-looking bunch. Their appearance may lend credibility to the claim that flash mobs, with their conspicuous lack of political or economic demands, their reliance on expensive technology for organizing, and their effect on their surprised and confused bystanders, are a subtly elitist phenomenon. As we left Toys 'R' Us, I heard more than one person claim that the "best part" had been watching the confused expressions on staff members' faces.

Reports on the event cropped up during the following week on the BBC; CNN; and that ever-reliable gauge of the faddish and innocuous, the AOL Welcome page. When I received a call from a friend who had seen me on television, kneeling and screaming in Toys "R" Us, I felt a petty surge of media-age exhilaration that the act itself simply couldn't match.

The obvious advantage of using protest-style tactics without choosing a specific object of criticism or outrage is that there is no measure of an event's success or failure. All a person can really say about a flash mob is that it happened. Perhaps flash mobs will have the unfortunate side effect of slaking some young people's thirst for activism. Or maybe these mobs will prove to be good and useful training for future forms of protest and political organization. Until then: no point, no foul.

Bob Berens

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